

Praxis Utriusque Banti.

The Antient and Modern
P R A C T I C E
OF THE TWO
Superior Courts at *Westminster*,
Viz. The
Kings Bench, and Common Pleas.
Together, with the
R U L E S and O R D E R S
Of the said **C O U R T S.**

To which is added,
T H E P R A C T I C E
O F
The **Sheriffs Court**, London.
Containing divers Antient Customs and Im-
munities of that City : Not hitherto publish-
ed in Print.

A S A L S O
Norma Curiarum Inferiorum
O R
A **RULE** to keep **INFERIOR COURTS**
within their just Bounds.

London, Printed for *J. Place*, and *T. Bassett*, at
Furnivals-Inn-Gate in *Holbourn*, and at the
George near *St. Dunstan's Church* in
Fleet-street, 1674. 26

Praxis Utriusque Banci.

The Antient and Modern

P R A C T I C E
OF THE TWO

Superior Courts at *Westminster*,

Viz. The

Kings Bench, and Common Pleas.

Together with the

R U L E S and O R D E R S
Of the said **C O U R T S.**

To which is added,

T H E P R A C T I C E
O F

The Sheriffs Court, London.

Containing divers Antient Customs and Im-
munities of that City : Not hitherto publish-
ed in Print.

A S A L S O

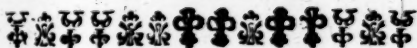
Norma Curiarum Inferiorum

O R

A R U L E to keep **I N F E R I O R C O U R T S**
within their just Bounds.

London, Printed for *J. Place*, and *T. Bassett*, at
Furnivals-Inn-Gate in *Holbourn*, and at the
George near *St. Dunstan's Church* in
Fleet-street, 1674. 26





To the Reader.

Reader,

I Here present thee with the
Practice both Antient and
Modern, of the most Eminent
Courts of England, which hold
Plea of Civil Actions (or as we
call it) between party and party,
according to the Dictates of the
Common Laws of this King-
dome; I say Antient and Mo-
dern, For I would not have thee
to believe that every syllable in
this Treatise is the very Pra-
ctice now used; nor do I think
it possible for any intelligent per-

To the Reader

son so to apprehend it, (the Intent of the Subject being obvious enough to be distinguished) unless reading it by piece-meal he should light on some part which represents the Practice formerly used either in the Court of Kings-Bench, or Common-Pleas, and mistaking it for the present Practice of those Courts, think himself thereby disoblged, and so damne the whole Book as False and Erronious, when revera tis only guilty of his own Misprision.

But perhaps it may be objected, That it would have been more acceptable to have inserted nothing herein but the Practice now used in those Courts: To which I answer, That in the
Compo-

To the Reader.

Composure of this little Tract, I chiefly aimed at my own Complacency in making use of that Method was most agreeable to my Fancy; The choice whereof, (if I flatter not my self) is not altogether unwarrantable by reason. For if it be allowed, that the Practice of these Courts is not perpetually the same, but sometimes mutable and subject to variation, (as I think few persons will deny) I am perswaded it will not be thought disagreeable, to represent, not onely the Forms but the very Grounds and occasions of those Variations which have occurred in point of Practice as far as Antiquity can be traced.

*In order to the accomplishing
of*

To the Reader.

of which Design, I have first represented an Abstract of the Antient Practice of the Courts of Kings-Bench and Common-Pleas.

Then an Account of what is now practiced in those Courts, having respect to the alterations have been made therein by Acts of Parliament, consent of the Entering Clerks, and Chief Practicers in both Courts confirmed by the Judges thereof.

And lastly, the Rules and Orders of both Courts (as far as possibly they can be procured) whereby most plainly and accurately is demonstrated what the Practice of the said Courts hath been in all Ages, and what course the Reverend Judges have ta-

ken

To the Reader.

ken at all times to reform the
Abuses of each Court.

And now I hope I have given
every intelligent Person (not
prepossessed with prejudice) their
desired Satisfaction in this pre-
sent Publication of the Antient
Practice, that from thence may
be seen the difference of the Mo-
dern : For as I suppose it to be
the duty incumbent of every
Student in the LAW, to con-
sult the difference in Practice
of these Supream Courts the
Kings-Bench and Common-
Pleas, according to Times suc-
cession ; So I have endeavoured
by a Serious Consultation with
the most Eminently knowing in
both, to form a Method requi-
site and agreeable to that neces-
sary

To the Reader.

*sary Qualification: And may
these my Endeavours be as suc-
cessful to them, as they shall
wish and hope their own to
others.*

A

TABLE to the Practice of the Court of Kings Bench.

O F Appearances,	Page 14	Antient Practice.
Of Baile	5	
Of Declarations and Pleadings in general,	8	
Of Demurrers	20	
Of Imparlanes and Nonsuits upon Originals,	12	
Of Judgments	20	
Of giving Notice of Writs of Enquiry and Nisi Prius	21	
Of Matters which concern the Officers, Clerks and Attorneys of this Court,	15	
Of Tryalls at Barr, Special Verdicts, and new Tryals	22	
Of Rules given to enter Issues	24	Modern Practice.
Of delivering Declarations in causes removed, &c. and pleading to Issue or Tryal thereupon	25	
Of returning Writs of Habeas Corpus for removing Causes out of Inferior Courts, and the pleading to Issue in such Causes	ibid.	

The Table.

Of amending Declarations in matter of Form, or substance, after pleading a general Issue or Special Plea,	Page 26
In what case the Venue shall not be altered in Transitory Actions	27
Of the Teste of Writs of Scire facias against Baile	ibid.
Of the Teste of a Capias to warrant a Scire facias against Bail, and the time to be observed in delivering the same to the Sheriff,	ibid.
In what case the Bail shall be discharged upon the Defendants rendering himself,	28
In what case the Plaintiff cannot discontinue his Action without leave of the Court	ibid.
A Bill on the File may be mended before Plea, without Motion	ibid.
Of giving Notice of Tryal in London or Middlesex	29
No Execution against the Baile for Costs, where Judgment is affirmed upon a Writ of Error,	ibid.
Where a Scire facias against Bail shall be returnable upon a general return Ubique, and where at a day certain in Court,	ibid.
The Defendant shall not be compelled to plead to an Infant declaring by Guardian, &c. until he shews his Admission,	30
The	

The Table:

The Defendant rendring himself in discharge
of his Bail, to be committed in Execution
in three Terms, otherwise shall be dis-
charged upon Common Bail, 31

Where upon a Rule given to enter an Issue,
if the Record be not brought into the
Office, the Plaintiff shall be nonsuit, ib.

A second Outlary not to be pleaded in dis-
ability, if in barr. 32

After Li. lo. no waging of Law instanter,
ibid.

Where Husband and Wife are sued, and the
Wife only arrested, she upon filing common
Bail shall be discharged by Superfedeas;
but be being arrested shall appear for them
both, ibid.

Notwithstanding stay of Execution upon a
Judgment, a Capias or a Fieri facias
may be had against the Defendant, re-
turnable before the day limited; but not
against the Bail, 33

Judgment to be entred against the Defen-
dant upon Rules given to answer, though
the Attorney die before Plea, 34

In what case the Plaintiff may make up the
Paper-Book without Rule to Rejoyn in
Special Pleadings, and where Judgment
shall be had against the Defendant for
not bringing back the Paper-Book in time,
ibid.

The Table.

<i>Where the Bail shall be discharged by Pleading,</i>	35
<i>Certiorari where not to be granted, ibid.</i>	
<i>Where the Defendant shall have a Terms notice to plead,</i>	ibid.
<i>Where a new Count shall not be added to a Declaration upon pretence of Amendment</i>	36
<i>Where the Defendants Attorney shall enter his Appearance of the precedent Term, and plead to Issue, or Judgment to be entred by default,</i>	ibid.
<i>Where the Defendant may alter his Plea, and plead de novo what he pleaseth,</i>	37
<i>The Prisoner rendring himself in discharge of his Bail, (and the Bail-piece discharged) no Scire facias after Recognizance,</i>	ibid.
<i>Where the Defendant shall plead of the same Term Declaration is delivered,</i>	ib.

Rules and Orders.

T <i>hat every Clerk of the Office shall have a Seat in Westminster-Hall,</i>	39
<i>For filing Special Bail,</i>	ibid.
<i>For allowing the Sealing of one Writ to Clerks of the Office every Term</i>	40
<i>Attorneys to attend the Court,</i>	41

The Table.

Latitat and Common Bail in Ejectment	42
No Alias or Pleures Distringas with Tales for a Tryal at Bar to be sued forth until the first Writ with a Pannel of the Ju- rors Names be delivered to the Secondary, to estreat their Issues for not appearing,	43
Concerning Sheriffs, Under-Sheriffs and their Deputies	ib.
No Writs to be sealed without they be signed by the proper sign of the Court	45
No Warrant to be taken from any person under Arrest, for the acknowledging of a Judgement, unless an Attorney be pre- sent	46
That the Defendants Attorney shall give a Note in Writing of what Lands are in the Defendants Possession, &c. in every Action of Ejectment where Lease, Entry and Ouster ought to be confessed for such Lands as are in the Defendant possession,	47
No Record of Nisi prius to be sealed above a Month after the end of the Term	48
That the true place of above, and addition of every person sworn in the Court shall be inserted in his Affidavit	ib.
Concerning the Fee of 2 sh. to be paid to the Clerk that files the Bills in Court	ib.
Concern-	

The Table.

Concerning Accediam's, and special Baile	49
Of the Clerks accounting with the Secondary	50
Of trying of Issues, and entering causes in the Book of the Lord Chief Justice of this Court; and where for want thereof a Ne recipiatur may be entered,	52
Of giving notice upon discharging of Prisoners for want of prosecution within three Terms,	53
Of allowing Writs of Error, and putting in Bail thereupon	54
Special Pleas to be delivered to the Office,	55
Concerning Bail,	57
No special Plea or Demurrer to be received by the Clerk of the Papers, without a Cancellors hand to it,	59
That the Clerks of the Court shall account severally with the Secondary for their Entries, and not two or three together in one Clerks name, and that no Clerk shall sign Writs or file Rolls for any other Clerk that is behind in his Account to the Office, without paying for the same,	60
Concerning the Tryal of old Issues,	62
No Defendant shall be compelled to put in Bail for a greater sum than is expressed in the Process; Nor shall the Plaintiff declare	

The Table.

declare against him for more upon such
Baile, *ibid.*

A

Table to the Practice of the Court of **Common Pleas.**

C Concerning Prisoners, Of Bail, Concerning the <i>Writ</i> of <i>Clausum fregit</i> , and special <i>Writ</i> containing the Decla- ration at large, and of filing new Origi- nals, Of <i>Imparlances</i> , Of signing and entering of <i>Judgments</i> Of <i>Appearances</i> upon <i>Exigents</i> , <i>Habeas</i> <i>Corpus</i> , <i>Plur. Capias</i> , <i>Distringas</i> , &c. Of <i>Attachments</i> upon <i>Contempt</i> , Of amending <i>Entries</i> , Of reading <i>Demurrers</i> , <i>Special Verdicts</i> , &c. in Court; and the Court used there- in by the <i>Prothonotaries</i> , Of the chief <i>Prothonotary</i> , Of the <i>Testes</i> and returns of <i>Writs</i> in all <i>Actions</i> real and personal, and those brought by <i>Attachment</i> of <i>Priviledg</i> , &c.	1 Antient 3 and Modern. 5 ib. 6 8 9 ib. 11 12 ib. The
--	---

The Table.

<i>The antient Course of giving Warrants to confess Judgments,</i>	13
<i>Of renewing Judgements by Scire facias,</i>	14
<i>Of persons taken in Execution in forrein Counties,</i>	ib.
<i>Concerning the Priviledge of the Clerks of the Court,</i>	15
<i>Of carrying down causes to be tryed by Pro- viso,</i>	ib.
<i>Of giving notice upon Writts of Inquiry, and Nisi prius,</i>	16
<i>Of declaring upon Reversal of Utillaries, and Bail to Writts of Habeas Corpus,</i>	17
<i>Of appearing in Quare Impedit and Wast upon the Distress,</i>	ib.
<i>Of declaring in causes removed, aswell out of Inferior Courts, as otherwise,</i>	ib.
<i>Of arresting Judgment,</i>	18
<i>Of matters concerning the Prothonotaries ; and of the Clerks and Attornies of this Court, and their Clyents,</i>	19
<i>Of Tryals at Bar,</i>	20
<i>Of an Habeas Corpus,</i>	21
<i>Of declaring upon Mesne process,</i>	ib.
<i>Of Nonsuits,</i>	22

Orders

The Table.

Orders of Court.

- Ordinances made in the 35 year of King
Henry the sixth for the good Rule and
Order of the said Court,* 24
- For redressing the slackness of Attornies in
paying to the Prothonotaries for their En-
tries, and in taking Copies of such En-
tries of their Clerks and paying them for
the same,* 34
- The manner of reforming of abuses in the
Members of this Court by Sir James Dyer
Lord Chief Justice thereof; with his
Charge to the Inquest thereupon,* 40
to 52
- For reformation of certain Abuses and de-
fects in Officers and Ministers attendant
and belonging to the Court of Common-
Pleas,* 52
- Writs, Process, and Entries to be made by
the Philazers of this Court only,* 59 60
- Certain general Orders made Trin. 24. El.
for the Regulating the Practice of the
Court,* 62
- Concerning Writs of Dedimus potestatem,* 69
- Against the entring of Judgments by any
Clerk or Attorney before the Costs be
thereupon taxed or rated, and allowed
by*

The Table.

by a Judge or Prothonotary of this Court,	73
Concerning the Prothonotaries Clerks of this Court ; their entring and bringing in of Rolls ; the forbidding them or the Attornies of this Court ; the making and suing out Executions upon Judgements which are not signed by a Prothonotary of this Court ; and the limiting a time to the Attornies to give their Attendance at this Court,	76
A Declaration what Writs, Process and Entries are to be made by the Filazers of this Court onely, and by none other,	80
Concerning the entring and delivering of Record of the first Capias upon Originals, and the entring Appearances of Record with the Filazer by the Defendants Attorney, before he receive a Declaration, or offer to appear,	82
Concerning Fines sued out by Attornies,	86
Concerning Exaction, and the excessive taking of Fees,	90
Concerning Pursuits of Informations exhibited upon penal Statutes,	94
Orders set down to be observed in this Court, touching pursuits upon penal Laws	100
Orders concerning Informers, and other Prosecutors upon penal Laws,	103
Concerning Outlawies, and Writs of Trepass,	

The Table.

pass, Quare clausum fregit,	108
That the Offices of Entering-Clerk, and At-	
torney, shall be distinct, and not promisc-	
uously used by one person,	113
Concerning the filing of Writs of Covenant,	
Writs of Entry, Warrants of Attorney,	
and other Writs relating to Fines and	
Common Recoveries,	122
The Judges Reasons against a Patent in-	
tended to be granted for Erecting of a	
new Office for the Stamping of all Origi-	
inals,	125
All Filazers Writs not to be sealed by the	
Clerks of the Seal-Office, unless they be	
first stamped by the proper Filazer,	130
Concerning the entering and bringing in the	
Rolls of this Court,	132
Concerning the taking of Bail upon causes	
removed out of Inferiour Courts; and the	
entering of Caveats for good Bail with	
the Justices of this Court,	138
Concerning Bails,	141
Concerning Vilaries,	144
Concerning the entering of Appearances,	147

A TABLE to the Practice of the Sheriffs Court.

OF the Sheriffs of London, their pow-
er, &c. with the manner of their
Keeping

The Table.

Keeping Courts,	Page 151
Of Awarding Proces,	152
The Course used against Bail or Mainper- nors, where the Defendant doth make default, or absent himself.	153
Of the Mainpernors surrendring the De- fendant's Body, in discharge of him- self,	155
Proceedings against a Mainpernor in Ac- count,	ibid.
Proceedings against a Freeman that hath sufficient, &c.	156
Wager of Law	158
Forrein and not resident in the City	ibid.
Battery or taking of goods	159
Executors and Administrators,	ibid.
No Wager of Law to be allowed for Vacu- als or Rent	160
A married Woman, using a Trade which her Husband is ignorant of, is lyable to the Law in all points, as if she were unmarried,	ibid.
A Lease taken by a married Woman,	161
Trespass done by a married woman,	ibid.
A Woman received alone without her hus- band,	162
Where the Husband shall have Aid of his Wife	ibid.
Wager of Law by a Free-man by Birth or Redemption,	163

The Table.

One Obligee paying the debt, shall recover it again of the other Obligees	ibid.
Forrein Attachments,	164
Of Sequestrations	169
No Forrein Plea to be allowed	170
No certain place to be recited in an Obliga- tion	172
A double Obligation,	173
An Acquittance in a Forrein County,	175
A Freeman arrested without Summons if he be a fugitive,	176
A Plea of taking of Cattel	177
No Adjournment of the Court	ibid.
Of Pleading	ibid.
Customes pleaded	178
No Wager of Law against a Tally	ibid.
Recognizance taken in the Sheriffs Court,	179
The Sheriffs may detain any man in their Houses without sending him to the Gaol,	ibid,
Proces to be recorded within the Counters,	180
Nota.	ibid,
Default by a Juror 3. d.	181
Inquest of Offices for Batteries	ibid.
A Contract made by a Merchant in a forein County is answerable in London,	ib.
Inquest of Merchants passant	182
Contrasts made beyond the Seas	ibid.

The Table.

Goods effoynd out of the City	183
Examination before Judgment	184
Peremptory Oath allowed	ibid.
Appearance accepted sitting the Court.	ibid.
Plaint mended before Issue or Judgment.	186
Nc unque Ballivus cannot be pleaded here in Account	ibid.
Account against an unmarried Woman or an Infant	ibid.
The Mayor and Court of Aldermen to com- mand the Sheriffs Court	187
To arrest for security before the Money or Rent be due	ibid.
An Arrest made by a Creditor without a Serjeant	188
Of Amerciaments.	189
The Landlord is to have his Rent paid first before any other, although the party hath committed Felony.	ibid.
For Houses of Forty shillings or under, & Quarters warning; but above Forty shil- lings Rent, half a years warning	190
Executions by Body or Goods	ibid.
Of Waging Law	191
Reparations by the Lessor	ibid.
Assumpsit and Concessit solvere,	ibid.
Concerning the tuition of Orphans	192
One may not stop his own Gutter, to annoy his Neighbour	ibid.
Partition,	ibid.



*Bancus
Regius*

THE
Course and Practice
 OF THE
 COURT
 OF
 KINGS-BENCH:

Concerning Prisoners.

BY the Rules and common practice of this Court, no Writ of *Habeas Corpus cum causa ad faciendum & recipiendum*, directed to any Sheriff, other then of *London and Middlesex*, ought to be returnable *immediatè*, or in the Vacation time, but at a day certain in Court

B

in

Bancus

Regius.



in the Term, unless it be to deliver a Prisoner over to Prison in discharge of his Bayl. But if such Writ of *Habeas Corpus cum causa*, &c. be directed either to the Sheriffs of *London* or *Middlesex*, it may be granted in Term time, or in the Vacation retornable *immediatè*; and of such *Habeas Corpus* retornable *immediatè*, the Sheriff ought to make his return the same day the Writ is delivered unto him, and must bring the Prisoner's Body immediately, as is required by the Writ, without permitting him to wander abroad by colour or pretence thereof.

So where an *Habeas Corpus* is directed to a Sheriff, Warden of the *Fleet*, or *Goal*, the Prisoner is to be brought in Custody according to the Writ at the day limited, without suffering the Prisoner to wander abroad in the mean time under pretence of such Writ.

In like manner an *Habeas Corpus ad Respondendum* may be granted to the Warden of the *Fleet*, or the Keeper of an interior Prison of a Liberty, or Franchise, retornable at a day certain in Court, and shall be as good cause to detain a Prisoner, as a *Capias ad Respondendum* directed to a Sheriff.

In the same Nature is a Writ of *Habeas*

of the Court of Kings-Bench.

3

Habeas Corpus ad Satisfaciendum, but the Attorney which sues it out must indorse the number Roll of the Judgment thereupon, and then it shall be taken for as good cause of deteyner as the Writ of *Capias ad Respondendum* above-mentioned.

*Bancus
Regius.*

So if a Prisoner be returned charged with Process out of the Court of Common Pleas or Exchequer, upon an *Habeas Corpus cum causa*, though returnable at a day to come, By the Course of this Court the Prisoner may be committed with those causes.

But if upon an *Habeas Corpus* or *Capi Corpus*, the party be returned *in Custodia*, and baylable, (where special Bayl is requirable) the Bayl is not to be taken absolutely without consent of the Plaintiff or his Attorney; And if Bayl be taken *de bene esse*, the Prisoner ought not to be discharged until the Bayl be assented to, or the Plaintiff be over-ruled in Court to accept the same upon Examination.

But if a Prisoner, committed to the *Marshalsea* by Process out of this Court, gives Rules to declare (so as the Plaintiff or his Attorney hath notice, and Oath be made thereof) And the Plaintiff doth not declare thereupon within

Bancus
Regius.



two Terms *inclusive*, to be accounted from the time of his Commitment of the Defendant, the Prisoner shall be discharged in the end of the second Term upon Common Bayl; And so is the Common usage and practice of this Court in all points, if the Defendant be committed to any other Prison by process out of this Court, upon giving Rules and Notice, and making Oath as aforesaid.

By the Course of this Court (founded upon the Statute of 23 Hen. 6.) no Prisoner taken upon a *Capias* in Process ought to be discharged till he hath given Bond to appear, except the Plaintiff or his Attorney shall consent to take an Appearance without Baile, and in such case the warrant of Attorney must appear to be subscribed or accepted by the Defendants Attorney which warrant shall in no wise be revoked; And the Court hath used to grant an Attachment against the Bailiff offending herein, or against the Attorney refusing to appear, or procure an Appearance, having so subscribed or accepted such warrant as aforesaid.

of the Court of Kings Bench.

Of Bayle.

50
*Bancus
Regius.*

BY the Rules of this Court special Baile is required in all causes of Removal, be it by *Habeas Corpus*, writ of Priviledge, or *Certiorari*: And if the Action be transitory, and removed out of the Courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, or *Poole*, Where the Judges of *Nisi prius* doe seldom come, by the course of the Court it must be laid in the County where either the Cities or Townes and Counties above-mentioned do lye, as *Kent*, *Southampton*, *York*, *Stafford*, and *Dorset*.

But by the Course of this Court in all Actions where the damages are incertaine untill declaration as in Covenant, &c. the Bayle shall be at the discretion of the Court; and so it is in Priviledge at the suit of an Attorney in such cases wherein a common person cannot have special Bayle, unlesse the plaintiffe sues for fees, &c. as a Minister of this Court.

In like manner this Court allowes no special Bayle in Assault, Conspiracy, or false Imprisonment without Motion and Rule of Court. Nor in Slander (unlesse in Slander of Tytle) but at the discretion of the Judges of this Court.

The Course and Practice

Bancus

Regius.



Regularly if a Defendant be removed (by *Habeas corpus* from this Court) out of the Interiour Courts of *London*, *Westminster*, or *Southwark*, or any other Inferiour Court within five miles of *London*; and intendeth to be bailed thereupon, he ought upon or within four dayes next after allowance of the Writ, to give notice in writing of the names and addition of the Bayl, the time when, and the Judge before whom the same is intended to be put in to the Plaintiff or his Attorney, or him that caused the Plaint to be entred; or if none of these can be found, then notice of the Premisses must be left in writing with the chief Clerk of the inferiour Court, or his Deputy, by the party that tenders the Bail, or his Attorney, and oath made thereof; Otherwise the Bayl will not be taken, but a *Procedendo* granted (if desired) before Bayl accepted.

In like manner if no Bayl in such cases be put in within Eight dayes after the *Habeas Corpus* allowed in the Inferiour Courts before mentioned when it is returnable *immediate*, according to the usual practice any Judge of this Court may grant a *Procedendo* (if it be desired before Bail taken).

So

of the Court of Kings-Bench.

7

*Bancus
Regius.*

So if Bayl be taken in the absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*; and if no Exceptions be taken within Twenty dayes after notice given to the Plaintiff, or his Attorney, of the names of the Bayl, and before whom taken; Then the Bayl (upon Oath made of such notice) ought to be delivered out to be filed.

But if the Bayl be taken upon an *Habeas Corpus* before a Judge at his Chamber, and not excepted against within Twenty dayes after notice, as hath been above said, if it be not filed within four dayes after the twenty dayes, a *Procedendo* will be granted upon Certificate that it is not filed.

And lastly, according to the Course and Practice of this Court, if the Defendant in an Inferiour Court in the cases above mentioned doth omit putting in Bail according to the Rules and Method before prescribed, the Plaintiff in the said Action or Plaint may speed the Defendant to put in or file his Bail by Rules given, and if he doth not file the same according to such Rules, upon Certificate thereof, a *Procedendo* will be granted.

Breves
Regius.



Of Declarations and Pleading in
general.

IT is not the Practice of this Court to repeat the Original Writ (as it hath been, till of late in the Common Pleas) in Declarations of Actions upon the Case, or personal Actions upon any general Statute, as *Hue and Cry*, *Monopolies*, or for *a Suit in the Admiralty*, &c. except in debt: but onely the nature of the Action; A. B. *queritur de C. D. in Custodia Marresealli Marrescalcie domini Regis coram ipso Rege existen: De placito transgressionis super Casum*, or, *de placito transgressionis et contempt: contra formam Statuti*; But in trespassse *Quare clausum fregit* the plaintiffe must in the declaration mention the place certainly where the trespassse was committed to prevent the use and necessity of the Common Barr and new Assignment. So of late it is ordered by Rule of Court, that the Plaintiffs Attorney shall at his perill in all Actions prosecuted in this Court, (where the cause of Action is said to be done *vi et armis, seu contra pacem domini Regis*) insert the true addition of the degree, quality, Mystery, trade or profession, as also the true and certain place

of the Court of Kings Bench.

2

of abode, or habitation of every Defendant therein.

*Bancus
Regius.*

But in Covenant there must be put no more of the Deed in the Declaration than is useful for assigning of the Breach, not repeating the Covenant in the Conclusion; nor in Slander any long preambles used, or inducements inserted more than necessary, Except where a special inducement or *Colloquium* is requisite; the like is to be observed in actions upon generall Statutes, where the whole Statute is not to be recited *verbatim* but the substance of it, and the declaration ought to conclude in these words *contra formam Statuti inde editi et provisi*; As in case of debt upon the Statute of 2 Ed. 6. for tythes, and 32 H. 8. for Maintenance, 21 Jacobi for Monopolies, &c.

So where the Plaintiff declares in debt upon a Judgement recovered in any of the Courts of Records at *Westminster*, (except it be against an Executor or Administrator) the Judgement must be onely recited. But if the Judgement be had and recovered in an Inferiour Court, or by or against an Executor or Administrator, it is usuall to repeat both the declaration and Judgement.

By

The Course and Practice

By the Usage and Practice of this Court, the Plaintiffe either paying Costs or giving Imparlance (at the defendants Election) may mend his declaration before it be entred: And if the Amendment be not soe great as to deface the Roll, it may by Rule of Court, direction of a Judge, or by consent, be amended after Entry thereof.

By the Course of this Court every Action upon the Case, Trespass, Trover for goods, Assault, or imprisonment, arising in any English County, must be laid in their proper Countyes, unless they arise where the Justices of *Nisi prius* doe seldom come; And because Trespass and Trover for goods, Battery, Imprisonment, and Slander, must needs be notorious in what County they arise, therefore by the Rules of this Court no Attorney ought knowingly to lay them out of their proper County, unless in the cases before expressed, or for such other causes as shall be allowed by the Judges of the Court, and duly made appear to be true.

According to the Rules and Practice of this Court, if a declaration be delivered seven dayes before the last day of the next precedent Term, or after, yet before plea (upon Oath made) the *Visne* may

may be changed upon motion in the *Bancus* said Transitory Actions the next Term *Regius.* after, and the Defendant shall plead to the new Action, as he should have done to the other without delay.

In like manner the *Visne* may be changed upon Oath, as before, though the Defendant come in by *Exigent*.

And what hath been already said concerning the Succinctness of Declarations, ought to be observed likewise in pleading; For it being the constant Practice of this Court in Actions of Trespass to mention in the declaration the place certainly where the trespass was committed, the Common Barr, and new Assignment are not to be pleaded, because the certainty contained in the declaration is *Equivalent* to a new Assignment.

Likewise for avoiding unnecessary repetitions in Pleading, no Attorney in the pleading of an Utlary ought to repeat the mesne Process, but must joine the Exigent and Utlary to the commencing of the Suit: Neither ought the Attorney in pleading a general Statute to recite the same, as the Statute of 21 *Jacobi* of Limitations.

Bancus
Regius.

Of Imparlanes and Nonsuits.

Herein there is not the same Strictness required in this Court as in the Court of Common-Pleas; For in this Court the plaintiff hath liberty by Order of Court to enter his Imparlance in speciall Actions the ensueing Term after he hath declared, entring the same of the first Term with an *Incipitur* according to the Practice of Inferiour Courts; And although all other Imparlanes are ordered to be duly entred before any Issues, Demurrers, or Judgments be entred thereupon, yet now it is seldom performed out of the remissness of those who should exact the performance thereof from the Clerks of the Court.

By the Course of the Court, if a defendant appear the first Term, and give no Rules to declare, the Defendants Attorney may the Second Term be compelled to accept a Declaration with an Imparlance, and the declaration may be entred as of that Term with an Imparlance over to the next Term, or in the first Term with an *Incipitur* as before, as the case shall require. But if the plaintiff declare not the Second Term, though

of the Court of Kings Bench.

13

though the Defendant give no Rules ; *Bancus*
Yet a Nonsuit may be entred at the *Regius.*
end of the second Term, upon a Continuance over by him, by *Dies datus*, but
not the third Term or after.

According to the Practice of this Court upon a meer reall Action an Impar-
lance shall be of Course. But in E-
jectment, or any personall action if the
defendant doe appear upon the first re-
turn of *Hillary* or *Trinity* Terme there
can be no Imparlane without consent
or special Rule of Court, nor in causes
laid out of *London* or *Middlesex* if the
Appearance be before *Crastinum Martini*
or *Mensem Pasche* : but if the Appearance
be upon or after those Returns an Im-
parlance lyes of Course.

So by the Course of the Court in
London or *Middlesex*, if the Appearance
be before *Crastinum Ascensionis*, or the last
return of any other Term the defendant
shall have no Imparlane without con-
sent, or speciall Rule of Court, but shall
plead as of that Term, within fourteen
dayes after the end of the Term upon
Rules given to answer ; But if it be of
Crastinum Ascensionis or the last return
then the defendant shall have an Im-
parlance of Course.

In like manner if a writ be returnable

Quinqwe

*Bancus
Regius.*



Nonsuit.

Quinque Pasche, or the last return of any Term, the defendant giving Rules, and calling for a declaration, if it be not delivered four dayes before the *Essoin* day of the ensuing Term, or more, a *Nonsuit* may be entred.

Of Appearances.

*Acceptance
of a warrant
by an Attor-
ney of either
Bench.*

ACCORDING to the Rules of this Court, if an Attorney of either Bench accept a Warrant, or subscribe a Process, Declaration or Warrant to appear, he shall be compelled to cause an Appearance, or be liable to an Attachment, or be put out of the Roll, as the case requires; and the party shall not be received to countermand such Appearance after his retainer.

In like manner no person without Rule of Court, Order of a Judge, or of the Prothonotary, or Secondary of this Court, and notice to the adverse party or his Attorney, shall change or shift his Attorney; And that such Attorney newly coming in shall take notice at his peril of the Rules whereunto the former Attorney was liable, had he continued.

Likewise a Reteyner of an Attorney of the Common Pleas, by an Attorney
of

of the Court of Kings Bench.

19

of this Court, and *è converso*, shall be a sufficient excuse to the Attorney so retained, acting according to such re-
teyner; and the Attorney so reteining, without warrant from the party, shall be liable to the punishment.

*Bancus
Regius.*

*Of matters which concern the Officers,
Clerks and Attorneys of this Court.*

According to the Rules of this Court, no person shall be admitted to practice therein as a common Solicitor, unless he be admitted an Attorney of either Bench; except he do onely manage the Evidence at a Tryal, or in case he be but a private Solicitor or Servant of a Corporation, or doth sollicite onely the cause of his Master.

In like manner no person shall be admitted an Attorney of this Court, unless he hath practiced as a common Solicitor therein by the space of five years, or hath served or shall serve as a Clerk to some Judge, Serjeant at Law, practicing Councillor, Attorney, Clerk or Officer of one of the Courts of *Westminster*, unless his Master dye or give over his Practice; And that such person so offering himself to be admitted an Attorney, shall also upon Examination be found

of

*Bancus
Regius.*



of good Ability and honesty for such Employment; And sufficient proof (to be put in writing) shall be made of such service to the Prothonotary or Secondary of this Court upon desire of Admittance, and then filed without Fee.

Likewise no person shall practice in anothers name, nor any Attorney shall knowingly permit another to practice in his name, upon pain of being put out of the Roll.

Neither shall Attornyes dismissed by one Court from their Practice for misdemeanors be afterwards upon Certificate admitted to practise in another Court; in regard it is contrary to the intent of the Law.

Nor doth this Court allow any Under-Sheriff, or Bayliff of Sheriffs, or Liberties, during such their Employment to practise as Attorneys, and such are forbidden so to do, under pain of Expulsion from the Employment of an Attornev, and not to be re-admitted.

If any Attorney shall absent himself, and not attend his Employment in this Court for the space of one whole year together, unless hindred by sickness, he shall not be allowed his Priviledge of Attorney.

And

*Bancus
Regius.*



And for the prevention of Maintenance and Brokeage, no Attorney ſhall be Leſſee in an Ejectment, nor Bail for a defendant in this Court in any Action According to the conſtant uſage obſerved in this Court, no Rolls are to be delivered out to be entred to any Attorney or other perſon except to the Prothonotaries entring Clerks commonly called the Clerks of the Office. But if any ſuch Clerk to whom Rolls are ſo delivered, ſhall ſuffer them to be carried into the Country, he will thereby be in danger of excluding himſelf from entring any more Rolls afterwards as a Clerk of the Office.

According to the Rules and Orders of this Court in purſueance of the Statute of 31. *Eliz.* all Attorneys that ſue out Proceſs of *Exigent*, muſt be carefull that writs of Proclamation be delivered to the Sheriffs, who are to take care duely to execute the ſame.

If any Sheriff, under-Sheriff, and their deputies or Bailiffs, or the Bailiff of any liberty ſhall wilfully delay the Execution of any proceſs, or Execution, or Retorne of any proceſs or Execution, or ſhall take or require any undue Fees for the ſame, or ſhall give notice to the defendant, thereby to fruſtrate the Execution

Bancus
Regius.



cution of any writ, or proceſs; or having levyed, ſhall detain it in their hands, after the times of the Retorns of their writs beſides the ordinary courſe of Amerciaments The contempt or Misdemeanour appearing the Officer ſo offending ſhall be liable to an Attachment, Information, Commitment, or Fine, as the Caſe requireth And this aſwell in Caſe of a late Sheriff, or perſon before mentioned as of them that are in Office.

Alſo for reformation of abuſes by Blanck warrants granted by Sheriffs, whereby perſons are arreſted and driven to extorted compositions for their liberty without proceſs of Law; This Court doth forbid warrants to be granted out to any Officer to arreſt or attach any perſon before a Writ firſt come to the Sheriff and this Court doth alſo forbid the taking of immoderate and exceſſive Fees by Sheriffs, for execution of Writs of poſſeſſion, and reſtitution of poſſeſſion contrary to Law: Declaring that ſuch immoderate Fees ought not to be taken, and in caſe ſuch ſhall be taken, that this Court will proceed to puniſh the ſame according to Law.

Note that all Officers and Attorneys of this Court ought to be admitted of ſome Inn's of Court or Chancery in the ſame

of the Court of Kings-Bench.

19

same Term wherein they are admitted Officers or Attorneys or within a convenient time after, and to be in Commons one week in every Terme, and to take chambers there, or in case that cannot be conveniently, yet to take chambers or dwellings in some convenient places, and leave notice with the Butler where their chambers or habitations are.

*Bancus
Regius.*

Note that all Officers and Attorneys of this Court ought to appear in person in this Court upon or before the fourteenth day of *Michaelmas* Term, and upon or before the seventh day of every other Term.

Note that every Sheriff ought to have his Deputy in this Court, to return and receive Writs. And that each Deputy ought yearly before *Hillary* Term to have his name, and the place of his Residence in *London* or *Westminster*, set and continued up in Tables, in the Office of the Prothonotary of this Court.

Note also That the Clerks of Assize, their deputies or Assistants must personally appear with their *Postea's* on the First day of *Easter* and *Michaelmas* Term; And that the Deputy Sheriffs, and all other Officers of the Court ought personally to appear by the *Essoin* day

Bancus
Regius.



of every second return of every Term, and to continue there during the residue of the Term, without some just cause to the contrary allowed by the Court.

Of Judgments.

BY the Course and Practice of this Court, and the Rules and orders of the same, If Judgment be had and recovered for the plaintiff upon a cause removed by *Habeas Corpus* out of an Inferiour Court, having Jurisdiction of the causes, costs below shall be considered and cast into the Judgment; But if Judgment pass for the defendant, he shall be allowed his charges of putting in Bail by this Court.

Note that in a Judgment had by *Non sum informatus* or *nihil decit*, in this Court in an Ejectione Firme, the *capiasur* shall be entred upon the first Judgment.

Of Demurrers.

BY the Rules of this Court, and the Statute of 27 *Eliz.* upon Demurrer, the causes are to be specially assigned, and not involved with general unapplied expressions, of *Double, negative, pregnant,*

of the Court of Kings-Bench.

21

pregnant, uncertain, wanting form, and the like; but the party demurring shall shew specially wherein, that the other party may, as the cause shall require, either joyn in Demurrer, or amend paying costs, or else discontinue his Action. *Bancus Regius.*

In like manner, matters of Forme, aswell on the part of him that demur's as of him that joyn's in all parts of the Pleading, are declared by this Court to be discharged, unless such as are specially assigned upon the Demurrer.

Of giving notice upon Writs of Inquiry and Nisi prius.

IF the Plaintiff give Notice of a Tryal, and doth not proceed accordingly, he shall not take it down to Trial again without giving of new notice, unless by consent or rule of Court.

In like manner if such warning be given, and noe proceedings be made accordingly, the defendant, upon motion shall have his costs of his former attendance to be taken by the *Prothonotary* or *Secondary* of this Court, unless the Plaintiff give warning to the Defendant in convenient time, that he would not proceed, or doth shew cause to be al-

Bancus
Regius.



lowed in the Court in excuse of such costs.

*Of Tryalls at Barr, special verdicts
and new Tryalls.*

BY the Rules of this Court, made for prevention and remedy of excessive charges of Tryals at the Barr, especially whilst the Jury lyeth out, if a Jury lyeth out one night after a privy Verdict delivered, there shall be allowed for the whole dyet of each Jury-man that night no more then three shillings four pence a piece, and for two Tipstaves and one Cryer or Usher, to each of them no more then two shillings ordinary, besides the charges of the Jurors lodging.

In finding of special Verdicts where the points are single and not complicated, and no special Conclusion, the Counsel, if required. shall subscribe the points in question, and agree to amend the omillions, or mistakes in the mesne Conveyances, according to the truth, to bring the points in question to Judgment.

By the Rules of this Court, the unnecessary finding of deeds in *hæc verba*, upon special Verdicts, where the question rests not upon them but are onely derivation

of the Court of Kings-Bench.

23

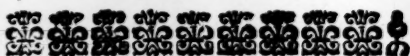
Bancus
Regius.



vation of Title shall be spared and found shortly, according to the substance they bear in reference to the Deed, as Feofment, Lease, Grant, &c.

So Likewise where a Verdict finds entire damages, where damages are the principal and part not actionable, though Judgment be arrested, yet by Rule of Court, a *Venire facias de novo* may issue, as upon an ill Verdict; And upon the new Tryal the party may sever his damages.

Bancus
Regius.



The Course of the proceedings in the Court of Kings-Bench, agreed upon by the Antient Clerks of the Court the second day of April, Anno Domini, One thousand six hundred sixty nine, Observed in their Practice, as followeth :

Of giving Rules to enter Issues.

1. **T**Hat in Actions lying in *London* or *Middlesex*, the Defendant ought not to give the Plaintiff a Rule to enter his Issue, or to try the cause by Proviso the same Term Issue is joyned, unless the Plaintiff hath first given the Defendant notice of a Tryal that Term, and hath made default: And that if the Action lye in the Country, the Defendant shall give the Plaintiff a Rule to enter his Issue the same Term Issue is joyned.

of

Of delivering Declarations in causes removed, &c. and pleading to Issue or Tryal thereupon.

2. That if a Cause be removed in the Vacation time out of London, Middlesex, or the Marshalsey, or other Courts within five miles of London by Habeas Corpus retornable immediate, and Bail put in of the next Term, if the Plaintiff do not deliver his Declaration eight dayes before the end of the Term, the Defendant to imparle of course. But if the Declaration be delivered eight dayes before the end of the Term, then the Defendant to plead to Issue; And in Michaelmas Term if the Declaration be delivered before the Essoine day of Crastinum Animarum, And in Easter Term before the Essoine day of Mensse Pasche, then the Defendant to plead to Tryal the same Term.

Of retorning Writs of Habeas Corpus for removing Causes out of Inferiour Courts, and the pleading to Issue in such Causes.

3. That no Habeas Corpus made out in the Vacation time to remove a Cause out

*Bancus
Regius.*

out of any inferiour Court, other then in *London*, *Middlesex*, or the *Marshalsey*, or other Courts within five miles of *London*, be made retornable *immediate*, but at a day certain in Court, and that every such *Habeas Corpus* retornable in *Trinity* or *Hillary* Terms, be not made retornable after the second retorn of those Terms, and that the Defendant shall plead to issue in those Terms that the Plaintiff may try his Cause the next Assizes if he please; or in default thereof, Judgment to be entred against him that Term by default.

Of amending Declarations in matter of form, or substance, after pleading a general Issue or Special Plea.

4. That the Plaintiff may amend his Declaration in matter of form after a General Issue pleaded before entry without paying costs or giving imparlance; but if he mend in substance to pay costs or give imparlance at his election; but if he mend in substance after a Special Plea pleaded, to pay Costs though he would give Imparlance.

*In what case the Venue shall not be altered
in transitory Actions.*



5. That in transitory Actions the Plaintiff after the Essoyn day of the subsequent Term after the appearance shall not alter his own *Venne* though he would pay costs or give imparlance.

*Of the Teste of Writs of Scire facias
against Bail.*

6. That there must be seven dayes at the least exclusive betwixt the *Teste* and return of each *Scire facias* against Bail, and not one four or five dayes, and the other ten and eleven dayes.

*Of the Teste of a Capias to warrant a Scire
facias against Bayl, and the time to be
observed in delivering the same to the
Sberiff.*

7. That there must be seven dayes exclusive betwixt the *Teste* and return of every *Capias* to warrant a *Scire facias* against Bayl, and that the *Capias* ought to be delivered to the Sheriff four dayes before the return be out.

Bancus**Regius.**

In what case the Bail shall be discharged upon the Defendants rendering himself.

8. That if the Defendant render himself to custody in discharge of his Bayl upon the day of the return of the second *Scire facias* against the Bayl *sedente Curia*, or if an Action be brought upon the Recognizance, if he render himself upon the day of the return of the process against the Bayl *sedente Curia*, the bayl are discharged.

In what case the Plaintiff cannot discontinue his Action without leave of the Court.

9. That a Plaintiff cannot discontinue his Action after Demurrer joyned and entered, or after a General or Special Verdict found, or after a Writ of Enquiry executed without leave of the Court.

A Bill on the File may be mended before Plea, without Motion.

10. That the Plaintiff may amend his Bill upon the file at any time before Plea pleaded, but not afterwards, without Motion.

Of

Of giving Notice of Tryal in London
or Middlesex.



11. That if Notice be given of a Tryal in *London* or *Middlesex*, and not tryed that sitting, the Plaintiff may try it the next sitting upon two dayes notice; but if not tryed the next sitting, then notice to be given as at the first.

No Execution against the Bayl for Costs, where Judgment is affirmed upon a Writ of Error.

12. That if Judgement be affirmed upon a Writ of Error in the Exchequer Chamber, no Execution shall go against the Bail in the Original Action for the costs taxed *occasione dilationis executionis*.

Where a Scire facias against Bail shall be retornable upon a general *rotorn ubique*, and where at a day certain in Court.

13. That if a *Scire facias* be brought against Bail upon a Recognizance in a Writ of Error generally, without expressing the Action or the Condition of the

*Bancus
Regius.*



the Recognizance, there the *Scire facias* must be returnable on a general Return *ubique*; but if the Action and the Condition of the Recognizance be set forth in the *Scire facias*, and appears to be by Bill, then the *Scire facias* to be returnable at a day certain in Court.

The Defendant shall not be compelled to plead to an Infant declaring by Guardian, &c. until he shews his Admission.

14. That if an Infant declare by Guardian or *Prochein Amie*, the Defendant is not compellable to plead until the Plaintiff shews a Rule of Court for his admittance.

An Infant sued not to appear or plead by Guardian, without Admission.

15. That if an Infant be sued he cannot regularly appear or plead by Guardian without admittance; but if he do, it is onely a *Misdemeanor* in the Attorney, for which the Court may punish him if they please, but no Error.

Bancus

Regius.

The Defendant rendering himself in discharge of his Bail, to be committed in Execution in three Terms, otherwise shall be discharged upon Common Bayl.

16. That if a Defendant render himself in discharge of his Bayl after Judgment, yet if the Plaintiff commit him not in Execution in three Terms following, he shall be discharged upon common bayl, as if he was committed for want of bayl upon Action.

Where upon a Rule given to enter an Issue, if the Record be not brought into the Office, the Plaintiff shall be Nonsuit.

17. That if a Defendant give a Plaintiff a Rule to enter his Issue, the Action lying in London or Middlesex, the Plaintiff must bring in his Record into the Office within four dayes after notice of the Rule; and if the Action lye in the Country, he must bring it in before the continuance day of that Term; or in default thereof a Nonsuit may be signed and entred.



The Courte and Practice

*A second Outlawry not to be pleaded
in Disability, if in Bar.*

18. That if a Defendant hath pleaded one Outlawry in disability of the Plaintiff, and that be reversed, he shall not plead another in disability; but *quare* if he may not plead another in barr.

*After Li: lo: no waging of Law
instante.*

19. That a Defendant cannot be admitted to wage Law *instante* after Imparance, but before he may, and then the Plaintiff cannot be Nonsuited if the Defendant perfect his Law; but if he wage Law after Imparance, the Plaintiff may be Nonsuited.

*Where Husband and Wife are sued. and the
Wife only arrested, she upon filing com-
mon Bail shall be discharged by Super-
se-deas; but he being arrested shall ap-
pear for them both.*

20. That if a Writ be sued out against Husband and wife, and the Wife only arrested and detained in Prison, she shall file a common Bail, and have *Superse-
deas*

deas to discharge her, but if the husband be only arrested, he must appear for himself and his wife.

*Bancus
Regius.*



Notwithstanding stay of Execution upon a Judgment a Capias or a Fieri facias may be had against the Defendant, returnable before the day limited; but not against the Baile.

21. That if a Defendant give a Judgment with stay of Execution till a certaine day, the Plaintiff may Notwithstanding such stay of Execution sue forth a *Capias* or a *Scire facias* into the Country where the action is laid returnable before that day to enable him at that day to take a *Testatum* against the Defendant but he shall not in that case sue out a *Capias* to warrant a *Fieri facias* against the bayle, unless by special agreement, because it is to the prejudice of a third person, and the *Capias* in that case ought to be delivered to the Sheriff four dayes before the Return be past, and there ought to be 8. dayes between the Teste and Return.

Bancus

Regius.



Judgment to be entred against the Defendant upon rules given to answer, though the Attorney dye before plea.

22. That if a Defendant appear and imparle till the first day of the next Term, and dye after the day in Bank, yet if Rules be given for answer, and no plea be pleaded, Judgement must be entred against him the next Term by *nihil dicit*, as of the first day of the Term.

In what case the Plaintiff may make up the paper book without Rule to Rejoyne in speciall pleadings, and where Judgment shall be had against the defendant for not bringing back the paper booke in time.

23. That in all special pleadings where the Plaintiff takes Issue uon the defendants pleading or traverseth the same, or demurreth, so as the defendant is not thereby let in to alledge any new matter, there the Plaintiff may make up the Paper book without giving a rule with the *Secondary* to rejoyne, &c. & if the Defendant doe not in four dayes after the Paper book delivered (provided the same

same be delivered in time) bring back *Bancus* the paper book and joyn in Issue or Demurrer, or given General Issue, Judgment may be entred by default. *Regius.*

Where the Baile shall be discharged by Pleading.

24. That if the Defendant die before the return of the *Capias* against him, his bayle may plead it, and be discharged.

Certiorari where not to be granted.

25. That no *Certiorari* ought to be made to remove a Judgment out of any inferiour Court, to execute the Judgment of an inferiour Jurisdiction.

Where the Defendant shall have a Term's notice to plead.

26. That if a cause have continued four Terms without prosecution before issue joyned, the defendant is to have a Terms notice to plead, &c. before Judgment can be entred by default; If after Issue joyned, a Term before the Tryall.

Bancus

Regius.



Where a new Count shall not be added to a Declaration upon pretence of amendment.

27. That a Plaintiff after a plea pleaded or before or after the second Term, shall not add a new count to his declaration as an *Indebitatus*, *assumpsit* or the like, upon pretence of mending his declaration.

Where the Defendants Attorney shall enter his appearance of the precedent Term, and plead to Issue, or Judgment to be entred by default.

28. That an Attorney of either Bench accepting a Warrant to him directed to appear for the Defendant, or Subscribing the same, and do not cause an appearance to be entred accordingly, shall the next Term be compelled to enter his Appearance of the precedent Term, and plead to Issue; or in default of pleading, Judgment to be entred by default.

Where

*Where the Defendant may alter his plea,
and plead de novo what he plea-
seth.*



29. That a Defendant having pleaded to Issue, and the Plaintiff neglecting to enter the Issue the same Term Issue is joyned, the Defendant within the first five dayes after the next Term may alter his plea, and plead *de novo* any other plea what he pleaseth.

The prisoner rendring himself in discharge of his Baile (and the bail-peece discharged) no Scire-facias after Recognizance.

30. That if a Defendant render himself to the Custody of the Marshall in discharge of his baile, and the baile-peece be discharged by the Secondary, no *Scire facias* can afterwards be sued out upon that Recognizance.

Where the Defendant shall plead of the same Term declaration is delivered.

31. That in causes in London and Middlesex, where the defendant appears

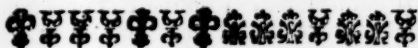
The Courle and Practice

*Bancus
Regius.*



upon a *Cepi Corpus*, if the declaration be delivered before the Effoyn day of *Craſtiu' Animarum* in *Michaelmas* Term, or before the Effoyn day of *Menſe Paſche* in *Eaſter Terme*, the Defendant is to plead, and to enter as of that Term, the Plaintiff giving Rules, &c.

Rules



Rules and Orders of the Court of Kings- Bench.

That every Clerk of the Office shall
have a Seat in *Westminster-Hall*.

Ordinat est qd Clerici Capitalium
Clericorum huius Cur habebant
sedes in Magna Aula Pleitorum in ea
pte Aule illi ubi de Antiquo sedes ha-
buerunt & ubi octo Shope modo sunt
erecti huiusmodi sedes assignandus hu-
iusmodi Clericis p Secundarium hu-
iusmodi Capitalium Clericorum p tem-
pore existentium.

P.
Anno 13
Car. 2.

For filing Special Bail.

Ordinat est quod quilibet Actorum
huius Cur qui imponit aliquod
Ballium p recognicionem coram Capitali
Iustice seu aliquo alio Iustice Cur hic &
quicunque vel ejus Actorum huiusmodi balli-
um accipit

T.
in eodem.

Bancus
Regius.



accipit qđ tunc Attorū qui imponeret
huiusmodi balē idem balē affilari cau-
sabit infra vigint dies post talem ac-
ceptōn subpena r.l.s. Et qđ omnia balē
modo capē de bene esse & que accepti sunt
p Attorū quē & nunc remanē cum ali-
quo Iustic huius Cur sitit affilentur
infra viginti dies nunc p' sequē sub
consimili pena r. l.

For allowing the sealing of one Writ to
Clerks of the Office every Term.

M.
An. 13
Car. 2.

Cum ex querela Clericorum Capitalium Clericorum huius Cur & eorū
Clericorum Cur hic dat intelligi & in-
formari Qđ cum secundum usum & con-
suetudinem Cur hic de antiquo usitat
Custodes sigilli dñi Regis & Cur hic
allocaverunt & allocari consueverunt cui-
libet Clerico Capitalium Clericorum hu-
jus Cur & cuilibet Clerico huiusmodi
Clerici ad finem cuiuslibet Terminii si-
gillationem unius vris gratis sine ali-
quo inde solvend nomine Jco vous
prie quodque huiusmodi allocatio p hu-
iusmodi custodes sigilli p' nup negat
& decet fuit Ordināt est qđ allocatio
p' Clericis p' secundum antiquum usum
Cur hic de futuro allocetur p Custod
sigilli dñi Regis & Cur hic Nisi Custodes

des sigilli p̄b ostenderent Causam in Bancus
cont̄ die lune p̄r post Crastin̄ Animas Regius.
rum.



Attorneys to attend the Court.

Ordinat̄ est p̄ Cū qđ omnes At- Eodem
torū hujus Cū compebunt in Termino
eorum p̄p̄tis p̄sonis sup̄ vel ante de-
cimum quartum diem Termini Sancti
Michaelis & super vel ante septimum
diem cuiuslibet al̄ Termini sub pena
forisfaciend̄ p̄ p̄mo defalt̄ r. s. & p̄
secundo defalt̄ rr. s. Et qđ quilibet At-
torū intrat̄ fuit in Officio hujus Cū
omnia placita & moraōnes in lege in-
fra tres dies post finem cuiuslibet Ter-
mini Et qđ nulle regule fact̄ fuint̄ p̄
Aliquem Justic̄ Cū dñi Regis coram
ipso Rege in aliqua acōne in d̄ca Cū
penden̄ post tertium diem p̄or̄ post fi-
nem alicujus Termini Et qđ null̄ At-
torū d̄ce Cū attend̄ aliquem Justic̄
p̄b ad faciend̄ aliquas regulas post ter-
tium diem p̄r. post finem alicujus Ter-
mini Et qđ null̄ regul̄ fact̄ fuint̄ p̄
consensum Attorū post tertium diem
post finem alicujus Termini Et qđ
omnes regule fact̄ post tertium diem
post finem alicujus Termini vacue for-
rent.

Latitat

Bancus
Regius.



Latitat and Common Bail in
Ejectment.

T.
Anno 14
Car. 2.

Ordinatur est p Cur qd in qualibet accone de plico transgt & ejectonis firme fore plac si cert facent in Com pido tunc billa de pido proscut fuit. Et si cert facent extra Com pido tunc bre de Latitat proscut fuit sicut casualem ejectorem in qualibet tali accone defend nominat Acetiam qd Commune Vallum p tali defend affiletur antequam aliqua declaraco p billam in huiusmodi accone delibatur fuit alicui tenenti in possessione tenetorum in huiusmodi narracone specifical Et qd si Accorū huius Cur p quer defecit in pformacone inde tunc nullum Iudicium intretur p quer versus casualem ejectorem nec tenens in possessione cogn dimissionem inraconem & ejecton tenetorum in tali Part mentionat ad triaconem erit int ptes pd.

Orders of Court.

43

*Bancus
Regius.*

No *Alias* or *Plures Distringas* with *Tales* for a Tryal at Barr to be sued forth untill the first Writ with a Pannel of the Juries Names be delivered to the Secondary, to estreat their Issues for not appearing.

Ordinat est p Curiam quod nullum breve de alias vel plur distring Jur cum tales p triacone erit ad Barr emanat fuerit priusquam precedens bre de distring Jur cum pannello de nominibus Jur adinde annex deliberetur Secundat hujus Curie ad intentionem quod erit satisfacti per Jur pro eorum non comparen super dicto preceden bti debito modo extrahantur.

H.
14 & 15
Car. 2.

*Concerning Sheriffs, Under-Sheriffs, and
their Deputies.*


IT is Ordered, That every Sheriff shall make and cause to be entred on Record a sufficient Deputy to receive all manner of Writs and Process under the pains and penalties mentioned in the Statute in that behalf made in the Twentry third year of the Reign of the late King Henry the Sixth; which Law shall be duly put in execution.

P.
15 Car. 2

That every Sheriff shall have a sufficient Deputy to be entred upon Record, according to the Statute of 23 H. 6.

And

*Bancus
Regius.*

 That the said Sheriffs or their Deputies shall constantly attend in *Westminster-Hall* in Term time.

That they shall not make or deliver any Warrants before the Writs be sued forth, nor deliver any Blank Warrants, neither shall any Clerk or Attorney receive or procure such blank Warrants,

And it is further Ordered, That the said Sheriffs or other their sufficient Deputies shall give their personal attendance in *Westminster-Hall* daily in the Term time, that so they may with the more convenience dispatch those Services which appertain to their Offices respectively. And that no Sheriff or Sheriffs Deputy shall deliver or make, nor cause nor suffer to be delivered or made any Warrant or Warrants before the Writ or Writs be duly sued forth and delivered to the said Sheriffs or their Deputies respectively; neither shall the said Sheriffs nor their Deputies, deliver or cause to be delivered any Blank Warrants, nor shall any Clerk nor Attorney of this Court receive or procure to be made any such Blank Warrants, upon pain of severe punishment and Fine to be imposed upon the said Sheriffs and Deputies, and utter Expulsion of the said Clerks and Attorneys respectively offending in the Premises.

Orders of Court.

45

*Bancus
Regius.*

No Writs to be sealed without they be signed with the proper sign of the Court.

IT is Ordered by the said Court, That the Keepers or Deputy-Keepers of the Seal appointed for sealing of Writs issuing out of the Court of ~~Kings~~ Bench, or any of them, shall not seal nor suffer to be sealed any Writ or Writs of *Lattit*, *Habeas Corpus*, *Subpena*, *Scire facias*, or other signable Writs issuing out of the said Court, unless the same Writs respectively be first signed with the sign of the said Court kept by the Clerk appointed for that purpose.

*Eodem
Termino.*

No Warrant to be taken from any person under Arrest for the acknowledging of a Judgment, unless an Attorney be present.

IT is Ordered by the Court, That no Bayliff nor Sheriffs Officer shall presume to exact or take from any person being

*Eodem
Termino.*

*Bancus
Regius.*



being in his custody by Arrest, any Warrant to acknowledge Judgment, but in the presence of an Attorney, for the Defendant; which Attorney shall then subscribe his name thereunto; which said Warrant shall be produced when the said Judgment shall be acknowledged: And if any Bayliff or Sheriffs Officer shall hereafter offend or do contrariwise, he shall be severely punished for so doing.

And it is further Ordered, That no Attorney shall from henceforth acknowledge or enter, or cause to be acknowledged or entred any Judgment by colour of any Warrant gotten from any Defendant being under Arrest, otherwise then as is aforesaid.

That



That the Defendant's Attorney shall give a Note in Writing of what Lands are in the Defendant's possession, &c. in every Action of Ejectment where Lease, Entry and Ouster ought to be confessed for such Lands as are in the Defendants possession.

Ordināt est p Curiam quod in qua-
libet acōne transgressionis et
ejectionis firme ubi p regulam Curie
defend cognū debet dimissionē intracon &
ejectionē pro tant pmissorum in narra-
tione mencionat quant est in possessione
dicti defend aut subtenent suorum At-
torū et eisdem defend protinus delibe-
raret Attorū quē certam notam in-
script de tenementis &c in possessione
dicti defend aut subtenen suorum ex-
issen.

T.
Anno 15
Car. 2.

*Hancus
Regius.*



No Record of *Nisi Prius* to be sealed above a Moneth after the end of the Term.

T.
Anno 15
Car. 2.

Ordinat est per Curiam quod null Record de *Nisi Prius* pro triacone erit ad *Assisas* sigilletur post finem unius mensis pro. sequen Clausum Terminy.

That the true place of Abode, and addition of every person sworn in Court, shall be inserted in his Affidavit.

M.
Anno 15
Car. 2.

Ordinat est p Curiam quod verus locus habitationis & vera additio cuiuslibet persone que prestiterit sacramentum suum in Curia inserantur in huiusmodi Sacto.

Concerning the Fee of 2 s. to be paid to the Clerk that files the Bills in Court.

*Eodem
Termino.*

Ordinat est per Curiam quod quilibet Clericus huius Curie quolibet

bet Termino tempore redditionis com- *Bancus*
puti sui solv & Officiat hujus Curie *Regius.*
qui recipit villas hic in Cur de Record
affiland antiquum feodum duorum so-
liborum pro quolibet Attozn & Philizat
hujus Curie qui retinet dictum Cleris
cum ad agend & intrand lectas & nego-
tia in eadem Curia hic penden.

De Termino Sancti Michaelis Anno
Regni Caroli Secundi nunc Regis
Anglie &c. decimo quinto.

Concerning Acciam's, and Special
Bail.

Ordinatum est p Curiam pro evi-
tatione oppressionis colore pro-
cessus e Curia hic emanau qd nullus
Attoznatus psumat ad periculum suum
facere vel fieri causare aliquod pre-
ceptum seu breve cum clausula (Ac-
eciam &c.) versus aliquem heredem
Executorem sive Administratorem, nec
in aliquo casu quocunq ubi p consue-
tudinem Curie speciale ballium pe-
ti non debet ; Adque si defendens le-
gitime

M.
Anno 15
Car. 2.

Bancus

Regius.



gissime deliberetur ab arresto sup ali-
quo processu idem defendens non ite-
rum arrestabitur eodem tempore vir-
tute alius processus ad legem cuiusdam
querentis; Et si aliquis Attorn aut
querens in dicto processu nominat of-
fendent in premissis, nomen cuiuslibet
Attornati sic offendentis expungetur e
Rotulo Attornatorum; Et preterea tam
idem Attornatus quam querens in dicto
processu cominati respective punientur
pnt Curie iustum videbitur.

Per Curiam.

De Termino Sancti Hillarij Anno Regni
domini Caroli Secundi nunc Regis
Anglie &c. decimo quinto & de-
cimo sexto.

Of the Clerks Accounting with the
Secondary.

H.
Anno 15
and 16
Car. 2.

Ordinatum est p Curiam qd qui-
libet Clericus huius Curie red-
dat compitum suum Secundario ejus-
dem

*Bancus
Regius.*



dem Curie infra sex dies proxime post finem cuiuslibet Terminii Pasche, et infra octo dies proxime post finem cuiuslibet Terminii Sancti Michaelis, et infra decem dies proxime post finem cuiuslibet Terminii Sancte Trinitatis et Sancti Hillary secundum antiquam Consuetudinem, et sepeales priores Regulas huius Curie; Et quod quilibet Clericus imposteriorum offendens in premissis pro prima Offensu suspendatur a privilegio predicationis sue; quodque nulla brevia nomine sua signentur, nec Rotuli de Intrationibus suis in Officium recipiantur quousque computum suum reddiderit, et denarios superinde debitos solverit; Et quod pro secunda Offensu in premissis expungatur e Rotulo Clericorum huius Curie ad discretionem Capitalis Clerici vel Secundarii eiusdem Curie.

Per Curiam.

Bancus
Regius.



H.
Anno 16
Car. 2.

De Termino Sancti Hillarij Anno Regni
Domini Caroli Secundi nunc Regis
Anglie &c. decimo sexto.

*Of trying Issues, and of entring Causes in
the Book of the Lord Chief Justice of
this Court; and where for want there-
of a ne recipiatur may be extred.*

Ordinatum est per Curiam quod
Critus juncti de aliquo precedente
Termino triati fuerint infra primam
septimanam cuiuslibet Terminij, Et
quod Custos Breuium huius Curie non
sigillabit aliquod Recordum de Nisi
Prius talium Crit post septimanam
cuiuslibet Terminij absque speciali li-
centia Capitalis Iusticiarij huius Cu-
rie Et ulterius ordinatum est quod
nisi cause triande apud London & Midd
intrate fuerint cum Capitali Iusti-
tario huius Curie p spacium duarum
dierum ante Sessionem super qua tale
cause triande sunt, Barrescallus potest
intrare ne recipiatur ad instanciam de-
fendentis, sive ejus Attoznati.

Per Curiam.

De

Orders of Court.

53

Bancus
Regius.

*De Termino Pasche Anno Regni Domini
Caroli Secundi nunc Regis Anglie,
&c. decimo sexto.*

Of giving Notice upon discharging of
Prisoners for want of prosecution
within three Terms.

Ordinatum est per Curiam qđ qui-
libet Attoznatus hujus Curie qui
eronerabit aliquem Prisonarium ones-
ratum cum aliqua Actione hic in Curia
pendente extra Prisonam pro defectu
prosecutionis infra tres Terminos da-
bit noticiam querenti in eadem actione
vel ejus Attoznato, ad comparend co-
ram aliquo Justiciario hujus Curie ad
ostendend causam quare hujusmodi pris-
sonarius eronerari non debet pro de-
fectu prosecutionis priusquam procura-
bit aliquod warrantum sub manu ali-
cujus Justiciarii hujus Curie pro ero-
neratione hujusmodi Prisonarii; Et si
querens in eadem Actione vel ejus At-
toznatus (super hujusmodi noticia eis
vel eorum alteri inde data) non com-
parebit ad ostendend causam in cons-
trarium tunc super Sacramentum pre-

P.
Anno 16
Car. 2.

Bancus
Regius.



standum huiusmodi noticie huiusmodi Prisonarius versus quem nulla prosecutio fuit infra tres Terminos tunc proxime precedentes exoneretur extra Prisonam ad periculum Attornati qui procurabit huiusmodi Prisonarium in forma predicta exonerari.

Per Curiam,

Of allowing Writs of Error, and putting in Bail thereupon.

Eodem
Termino.

Ordinatum est per Curiam qđ quislibet Attornatus huius Curie qui prosecutus fuerit aliquod breve de Erroze super aliquo Iudicio in Curia domini Regis coram ipso Rege obtento retornabile in Curia Camere Scaccarii allocabit huiusmodi breve de Erroze cum Clerico Errozum huius Curie infra quatuor dies proxime post noticiam datam Attornato querentis huiusmodi brevis de Erroze sic p ipsum prosecuti, acetiam imponet ballium super huiusmodi breve de Erroze infra quatuor dies

Orders of Court.

55

Bancus
Regius.



dies proxime post allocationem huiusmodi brevis de Erroze (si ballium imponi debet) vel in defectu inde executio fiat super huiusmodi Iudicio; brevis de Erroze in forma predicta persecuto non obstante.

Per Curiam.

Special Pleas to be delivered to the
Office,

Ordinatur est p Cur in plena Cur T.
qđ nullus Attozñ sive Clericus Anno 16
attendeñ hic in Cur pzetumat delibe Car. 2.
rare alicui ał Attozñ vel Clerico At-
tendeñ hic in Cur vel alicui ał plone
vel accipe ab aliquo ał Attozñ vel
Clico attend in Cur hic vel ab aliqua
a ppleña aliquod pñtum ad imponend
in Officium Clicoꝝum Pappñ vel co-
piam huiusmodi pñti priusquam hu-
iusmodi placitum imposñt fuit in co-
dem Officio Cleric Pappñ Et qđ ta-
lis copia postquam huiusmodi pñtum
imponetur fact fuit per Clicoꝝum in pñ
Officio Cleric Pappñ attendeñ & signat
C. 4 sub

*Bancus
Regius.*



sub pena. qđ quilibet Attorū sive Cle-
ricus in Curie hic attenden forisfaciet
p prima offens sua sic commissa decem
solid solvend piri ad usum Paupis
Et pro secunda offens sua sic commissa
viginti solid solvend similiter piri ad
usum Pauperis Et pro tertia offens
sua sic commissa qđ talis Attorū vel
Clericus expellatur e Curia hic secun-
dum priorem regulam pempt & gene-
ral factam in consimili casu per Cur
in plena Cur die Mercurij prior. post
tres septimanas Sancte Trin Anno
Regni Domini Jacobi nuper Regis
Anglie &c. secundo &c.

Concerning



Concerning Baile.]

De Termino Sancti Michaelis Anno
Regni Domini Caroli Secundi nunc
Regis Anglie &c. decimo sexto.

M.
Anno 16
Car. 2.]

Ordinatum est per Curiam quod
quilibet Attoznatus hujus Curie
qui comparebit pro aliquo defendente
in aliqua actione, in qua speciale bal-
lium non requiritur, affilabit com-
mune ballium pro hujusmodi defen-
dente infra sex dies proxime post fi-
nem ejusdem Terminis de quo compe-
ruit Et quod quilibet Attoznatus hu-
jus Curie qui imponet aliquod spe-
ciale ballium coram aliquo Justiciario
hujus Curie de bene esse super cepi
corpus dabit inde indilate noticiam
querenti vel ejus Attoznato: Et si
querens non callumpnabit ballium il-
lud pro insufficientia inde infra viginti
dies proxime post noticiam ei vel ejus
Attoznato inde datam tunc super Sa-
cramentum prestitum in scripto hujus-
modi indorso ejusdem balli pro quo
sacramento

Bancus
Regius.



sacramento nullum feodum captum fuerit ballium illud affilabitur per Attornatum defendentis infra quatuor dies proxime post finem predictarum viginti dierum Et qđ quilibet Attornatus hujus Curie qui imponet aliquod speciale ballium coram aliquo Justiciario hujus Curie de bene esse super brevi de Habeas Corpus si querens non calumpnabit ballium illud pro insufficiencia inde infra viginti & octo dies post impositionem inde tunc ballium illud affilabitur per Attornatum defendentis infra quatuor dies proxime post finem predictarum viginti & octo dierum sub pena qđ quilibet Attornatus defaltum faciens vel in non dando noticiam ut predictum est, vel in non affilatione sepeialium balliorum vel eorum aliquis in forma predicta forisfaciet et solvet Pridie hujus Curie pro primo delicto suo summam 5. s; et p secundo delicto suo expungetur e Rotulo Attornatorum hujus Curie Et ulterius ordinatum est ea intencione quod ballia predicta debite affilantur, quod Clerici Justiciariorum hujus Curie in quorum manibus ballia sic capta de bene esse remanebunt infra sex dies proxime post finem cuiuslibet Terminii dabunt notam in scriptis Secundario hujus Curie

rie omnium balliozum de Termino *Sanctus*
 precedente sic impositozum, et in eo *Regius.*
 rum manibus tunc remanentium una
 cum nominibus Attoznatozum qui bal-
 lia illa imposuerunt, et die imposi-
 tionis eozundem.

Per Curiam,

No Special Plea or Demurrer to be re-
 ceived by the Clerk of the Papers,
 without a Counsel's hand to it.

Ordinatum est per Curiam qd
 nulla placita specialia seu mora-
 tiones in lege in aliqua causa hic in
 Curia sam penden vel postea prole-
 quend recept sunt per Clericum Pa-
 pyr hujus Curie antequam hujusmodi
 placita vel morationes in lege signat
 sunt manu prop alicujus Concily in
 ea parte retent. Et ulterius Ordinat
 est quod Clerici Papyr hujus Curie
 in omnibus copyis placitozum & libris
 papyr per ipsos faciend subscribant hu-
 jusmodi Copias placitozum & libros
 Papyr nomine Concily qui signavit
 hujusmodi placita tam ex parte quer
 quam

P.
 An. 18
 Car. 2.

Bancus
Regius.




quam ex parte defend Et quod in om-
nibus libris deliberand Justic hujus
Curie nomina Concilij qui signabunt
placita illa tam ex parte queſ quam ex
parte defend subscript forent hujus-
modi libris per Clericos vel Attoz na-
tos qui libros illos deliberarent.

That the Clerks of the Court shall ac-
compt severally with the Secondary
for their Entry's; and not two or
three together in one Clerks name;
And that no Clerk shall sign Writs,
or file Rolls, for any other Clerk
that is behind in his Account to
the Office, without paying for the
same.

*Die Lune proxime post tres septimanas
Sancte Trinitatis Anno Regni Do-
mini Caroli Secundi nunc Regis
Anglie &c. vicesimo.*

T.
Anno 20
Car. 2.

Ordinatum est per Curiam quod
quilibet Clericus hujus Curie
computabit seperatim per se ad finem
cujuslibet Terminii secundum antiquas
Regulas hujus Curie inde factas; Et
quod

qđ duo tres vel plures eorundem non *Bancus*
 insimul computabunt in nomine unius *Regius.*
 Clerici prout nuper usitatum fuit. 
 Et ulterius ordinatum est quod si ali-
 quis Clericus hujus Curie signaret
 vel signari permetteret aliqua brevia
 seu affilaret vel affilari permetteret
 aliquos Rotulos in nomine suo pro
 aliquo alio Clerico hujus Curie qui
 retro existit cum computo suo in Offi-
 cio tunc hujusmodi Clericus qui sig-
 naret vel signari permetteret aliqua
 talia brevia seu affilaret vel affilari
 permetteret aliquos tales Rotulos in
 nomine suo solveret arreragia com-
 puti talium Clericorum pro quibus
 aliqua talia brevia sic per ipsum sig-
 nata seu aliqui tales Rotuli sic p ipsum
 affilati forent.

Concerning

*Bancus
Regius.*



Concerning the Trying of old
Issues.

H.
An. 20 &
21 Car. 2

De Termino Sancti Hillarij Anno Regni
Domini Caroli Secundi nunc Regis
Anglie &c. vicesimo, & vicesimo
primo.

Ordinatum est per Curiam quod
Exitus iuncti de aliquo prioris Ter-
mino triati fuerint super prima vel se-
cunda Sessione cuiuslibet Terminis pe-
remptorie. Et quod Custos Breuium
hujus Curie non sigillabit aliquod Re-
cordum de Nisi Prius triandum contra
intentionem hujus Regule.

Per Curiam.

No Defendant shall be compelled to
put in Bail for a greater summe than
is expressed in the Proces; Nor shall
the Plaintiff declare against him for
more upon such Baile.

T.
Anno 22
Car. 2.

Ordinatum est p Curiam qđ nullus
defens qui fuerit arrestat virtute
alicujus

alicujus processus e Curie Domini Regis coram ipso Rege emanant compelli fuerit imponere ballium pro majori summa quam in hujusmodi processu exprimitur Et ulterius Ordinatur est quod nullus queat narrabit versus aliquem defendens super aliquod ballium per ipsum imposuit in aliqua una narratione pro majori summa quam exprimitur in processu super quo defendens arrestatus fuerit.

Bancus
Regius.

THE



THE
Course of the Proceed-
ings Observed in the COURT
of Common-Pleas this present Year,
1673. as followeth;

Concerning Prisoners.

1. IF a Prisoners Body with his Causes be removed by *Habeas Corpus*, or *Writ of Priviledge*, if the Prisoner be there in person, he must undertake in double the summe: But if the Prisoner be not there in person, then the Bayl must be in double the summe.

2. If such a Prisoner when he comes in Court or before a Judge hath no Bayl, he is either to be committed to the *Fleet*, or remanded; but he cannot be committed to the *Fleet*, unless there be some process of the Common-Pleas returned, or unless he be brought to the Barre, and the Record of a Judgment or Ut-lawry be brought in Court to charge

The Course and Practice

*Bancus
communis.*

the Prisoner with in Court. But now the Common Practice is (upon removal of a Prisoner by Habeas Corpus) to sign a writ of Capias ad Respondendum, or Attachment of privilege to turn the Prisoner over to the Fleet.

3. If a prisoner be committed to the Fleet *pro defectu Mancaptorum*, and lyes there three Terms, and the Plaintiff doth not in that time declare against him, then upon a common Appearance the Prisoner is to be discharged out of Prison; But if the Plaintiff offers to declare, and the prisoner will not appear, then the prisoner must remain still in prison, and the Plaintiff may sue him to the Utlary notwithstanding he is in Prison.

4. Also (by the Statute made in the thirteenth year of his present Majesty King Charles the Second. Original writs may be sued upon personal Actions against Prisoners in the Fleet, and an Habeas Corpus granted to bring them to the Barr to answer any Suit or Declaration: which being put in and the Defendant not appearing Judgement may be entred by nihil dicit, and the Prisoner charged in Execution upon notice thereof to the Warden of the Fleet, by Rule of Court. Vide Stat. de Anno 13 Car. 2. Sess. 2. cap. 2.

of the Court of Common-Pleas.

3

Of Bayl.

Bancus
Communis.



IF the Bayle bring in the Principal at any time before a plea pleaded to a *Scire facias versus Manncaptors*, or before Judgment by default, the Court hath used to receive the Principal in discharge of his Bayl; and if the Plaintiff will pray him in Execution he may have him: If not, then the Principal shall be discharged and the Plaintiff may take him in Execution when he can arrest him, or he may sue forth Execution against his lands and goods.

But anciently the principal could not render his body in discharge of his Bayl after he was returned *Non est inventus* upon Record upon the *Capias ad Satisfaciendum*. But now the Court hath, the middle way, which is to receive the Principal upon the return of the first *Scire facias* if *Scire feci* be returned thereupon by the Sherriff, but if *Nichil* be returned by the Sherriff upon the first *Scire facias* then the principal shall be received upon the return of the second *Scire facias* and not before.

2. If a Defendant comes in by *Cepi corpus* returned in debt for twenty pounds, or above, or in any action up-

The Course and Practice

Bancus

Communis.



on the Case, or Trespass, *ad dampnum vel valentiam viginti librarum* or above, or if he be outlawed in any of these Actions *ad dampnum vel valentiam viginti librarum* or more, and reverseth the Utlary; the Defendant in such case ought to put in special Bayl: But in all other cases (except in Writs of Priviledge at the Suit of an Officer or Minister of the Court) the Defendants appearance by an Attorney shall be received without special Bayl. *But this Course is now altered by the late Act of Parliament, so that the Plaintiff cannot have special Bayl unless it be in the Writ, Debt Twenty pounds or upwards; and in all other Actions, the true cause of Action must be set forth at large in the Writ upon which the Defendant is arrested: Otherwise a Common appearance is sufficient. 13 Car. 2. Sess.2. cap.2.*

3. In all Writs of Priviledge at the Suit of an Officer of the Court, the Defendant if he be arrested, must put in special Bayl, although the debt or damages demanded, be under Twenty pounds; and if an Officer, or Attorney of this Court be sued, he ought to be sued by Bill at the first, and not by Original; and if he shall refuse to appear, he shall be forejudged the Court, and then

of the Court of Common-Pleas. 5

then he may be arrested, and so is the common course, but it is reserved to the Plaintiffs choice, whether he will sue him by Bill or Writ: But if one Priviledged person sue another, the Plaintiff may, and doth usually arrest the Defendant, whether he be of this or any other of the Kings Courts at *Westminster*, for that the first priviledge destroyes the second.

*Bancus
Communis.*


*Concerning the Writ of Clausum fregit,
and special Writ containing the Decla-
ration at large, and of filing new Ori-
ginals.*

x. IF the Defendant formerly had been arrested upon a *Clausum fregit*, the Plaintiff might have declared in any personal Action thereupon, except in debt: But of late they have used, and do now use, to declare in debt, upon suing forth a new Original in debt.

Of Imparlances.

i. IF the Defendant appears upon an Arrest by *Clausum fregit*, (which is a general Writ, and may be said to be the Common-Pleas *Latitat*,) he must have an Imparlance of course; but if

*Bancus
Communis.*



the Writ whereupon he was arrested be special, according to the truth of the Action, and returnable the first or second return in any Term, so as a *Venire facias* may issue forth, there the Defendant ought to answer the first Term in all personal and mixt Actions; but in real Actions, the defendant shall have one Imparance of course.

2. The reason why they have had Imparances in all cases in the *Kings-Bench* is, because the Defendant being arrested upon a general Writ a *Latitat*, could not know the cause of Action until the Declaration. And this reason holds in the *Common-Pleas*, where the Defendant is arrested upon a general *Clausum fregit*: But in other special Writs where the very Declaration is in the Writ, and the defendant might when he is arrested see the Declaration in the Writ, there he ought not Imparle, but to answer the first Term, as well in the *Kings-Bench* upon their new Writ of *Ac etiam billæ*, as in the *Common-Pleas* upon special Writs.

Of signing and entring of Judgments.

1. **B**Y the Course of the Court after the ordinary Rules given in the Office

of the Court of Common-Pleas.

7

Office be out, the Plaintiff may enter Judgment by *Nihil dicit*, (if the defendant doth not plead) and this is as well in Ejectment as in all other personal Actions, without moving of the Court. But of late it hath been used in *Quare Impedit* and Ejectment, to move the Court before they enter Judgment; and so is the common Practice now used.

*Bancus
Communis.*



1. But in all real Actions no Judgment is to be entred by *Nihil dicit* without motion in Court; And there was formerly a Rule made, That no Judgment by default should be entred in Ejectment without moving the Court; which Rule was afterwards altered by another, and then Judgment might have been entred by default upon a Rule entred by the Secondary, so that the Parish where the Lands lye were expressed in the Rule. But now Judgment cannot be had by default in Ejectment, unless upon Motion in Court, and Affidavit thereupon made, that the Tenant was actually served with a true copy of the Declaration, and that the contents thereof were read unto him; or he, or his Wife or his Servant were acquainted with the meaning thereof.

3. By the Rules and Orders of this Court, if Judgment be had by *Non sum*

*Bancus
Communis.*



informativus, or *Nichil dicit* in Ejectment, the *Capiatur* shall be entred upon the first Judgment.

4. Upon a Cause removed by *Habeas Corpus* out of an Inferiour Court (having Jurisdiction thereof) if Judgment be given for the Plaintiff, the colts below shall be considered and cast into the Judgment; but if for the Defendant, the charge of putting in Bail.

5. Note, That sixteen dayes are allowed by the Rules of this Court for the signing of Judgments after every Term, except *Easter Term*, upon Causes depending in the Term precedent.

Of Appearances upon Exigents, Habeas Corpus, Plur. Capias, Distringas, &c.

IF the Defendant appears upon the *Exigent*, or upon the *Habeas Corp. Plur. Capias*, or *Distring*, or upon Bayl put in upon an *Habeas Corpus*, or upon an *Att-lary* reversed, then by the course of the Court the defendant must answer the first Term, because he hath stood out so many Proceſs: And in such cases the Court does not use to change the *Viſne*.

of the Court of Common-Pleas.

9

Of Attachments upon Contempt.

Bancus
communis.



1. IF an Attachment be granted upon contempt sworn by Affidavit (as it ought) and the Defendant is arrested thereupon, and brought into Court, he ought to be committed to the Fleet, and then to be examined by Interrogatories: if he clear himself upon his Oath, he shall be discharged, and have his Costs paid him by the Prosecutor. If guilty, he shall be fined; but in this case the Prosecutor shall not be admitted to prove the defendant guilty, after he hath cleared himself upon his Oath.

2. But the course now used in such cases, is, for the defendant, with Sureties, to enter into a Recognizance in Court for his Appearance *de die in diem*, until he be discharged, and then to turn him over to the Secondary to be examined upon his Oath upon Interrogatories; but for want of Manucaptors to send him to the Fleet.

Of amending Entries, &c.

1 By the Course of this Court every declaration and plea ought to be entered upon Record, the same Term it is delivered

Bancus

Communis.



vered or pleaded, and every Issue or Demurrer the same Term it is joyned, and therefore if it be altered or amended before it be entred, he that altereth must pay costs, but if it be once entred upon Record, then there can be no amendment without consent, or Rule of Court upon Motion.

2 The Roll wherein the declaration is entred with an Impar lance to it, is called the Impar lance Roll : The Roll of the next Term after, wherein the declaration is again entred as before *verbatim* together with the Issue or Judgment to it, that Second Roll is called the Issue or Judgment Roll ; And if the first Roll which is the Impar lance Roll be right, and the Second Roll which is the Issue or Judgment Roll be mistaken, the impar lance Roll is the warrant to amend the subsequent Roll ; And if the impar lance Roll be mistaken and the Issue Roll both, yet if the Original writ be right, all the subsequent writs and Rolls are amendable by the Original.

3 If the Defendant pleads a speciall plea he may waive it the same Term before it be entred, or any Replication made thereunto ; and plead the general Issue

of the Court of Common-Pleas.

11

Issue: But if the Term be past it is intended to be entred, and therefore cannot be altered or waived without consent, yet if in truth the Plea be not entred but still in paper it may be amended upon payment of costs.

*Bancus
Communis.*



*Of reading Demurrers, speciall Verdicts,
&c. in Court; and the Course used
therein by the Prothonotaries.*

1. **A**fter the Barr have been once heard over then Records of Demurrers, and speciall Verdicts are read, and wagers of Law taken by the Secondaries in order, the Chief Prothonotary begins first, and then the Second and third Prothonotary in their courses; And untill the Books be delivered to the Judges, and the Record read, the matter in Law ought not to be spoke to at the Barr.



The Course and Practice

Of the Chief Prothonotary.

1. **T**HE Chief Prothonotary Swears all the Officers and Attornyes of the Court, and enters the Admissions of Record for the Officers; and for the Attornyes he enters them in the Remembrance Roll that they were *jurati in Curia*, and makes Certificate thereof unto the Clerk of the Warrants by which he enters the Attornyes name into the Roll.

2 The Chief Prothonotary ought to enter all Patents made to the Justices or Officers of this Court, and other patents of Grace by the King to the Court, and ought to have the first plea Roll, and the first common Roll of the Court; and to enter all writs of Adjournment of the Terms.

Of the Testes and returns of writs in all Actions real and personal, and those brought by Attachment of Privilege, &c.

1. **T**HERE must be nine returns between the Teste and the Return Inclusive of all Writs of *Formedon*, writs of *Ayell*, &c. and in Dower Writs of Entry

of the Court of Common-Pleas. 13

Entry &c. five returns: and in all other personall Actions fifteen dayes, *un- less after Issue joyned to be tryed by the Jury, and after Judgement obtained there shall not need to be fifteen dayes between the Teste and return of any venire facias, Habeas corpora Juratorum, distringas, fieri facias or Capias ad Satisfaciendum, and the want of it shall be no Error; (Except writs of Capias ad Satisfaciendum, where any Exigent after Judgment is to be awarded, and Capias ad satisfaciendum in order to make any Bail triable.*

*Bancus
Communis*

2 Nor need there be fifteen dayes between the Teste and return, of any process relating to Actions brought by Attachment of Priviledge which are returnable *de die in diem*; nor where the suit is by Bill against a Priviledged person, because the Continuances are likewise *de die in diem*, and alwayes upon a day certain, and not upon a common Return.

The ancient course of giving warrants to confesse Judgments.

THe principal in a Bond might formerly have given warrant to appear for himself and his Sureties, and to confesse Judgment for all, and it was warranted

*Bancus**Communis.*

warranted by the course of the Court : But if the Surety dyed the Principal could not confesse Judgment against the Executor of the Surety, for then he should take away his plea of *plene administravit* : And so it was if the Principal dyed, his Executor could not confesse Judgment against the Surety.

2 But this Practice is quite altered. So that no principal or other can give warrant for any but himself onely.

Of Renewing Judgements by Scire facias.

1. **I**F the Plaintiff in a Judgment dyes his Executor must renew the Judgment by one *Scire facias* ; but otherwise it is where the Defendant dyes, there must be two writs of *Scire facias* unless there be *Scire feci* returned by the Sherrieff upon the first writ of *Scire facias*, for one *Scire feci* doth amount to asmuch as two *Nichils* returned.

Of persons taken in Execution in forreign Counties.

1. **N**O Defendant can be taken in Execution in a forreign County, untill there be first a writ of *Capias ad satisfaciendum* sued forth in that County where

of the Court of Common-Pleas. 15

where the Action lyes, and *non est inventus* returned thereupon and filed; *Bancus Communis.* or that there be an Execution in the proper County entred upon the Roll, and a Testatum awarded.

Concerning the priviledge of the Clerks of the Court.

1. **T**He Clerks of the Court may resort to the Rolls of the Court to examine their own Entries, and make them right, if there be no writ of Error brought, nor Rule of Court nor *Recordatur* entred to the contrary; in which case the Clerks hands are rendred useless, So as he cannot amend any thing in the Roll, without a Rule of Court.

Of Carrying down causes to be tryed by Proviso.

1. **T**He Plaintiff must make one default in not carrying down the Record of *Nisi prius* before the Defendant may take it down by Proviso; except it be in Replevyn, in which Action the Defendant may take it downe the first time, and not stay till the Plaintiff make default.

*Bancus**Communis. Of Giving notice upon Writs of Inquiry,
and Nisi prius.*

1. **B**Y the antient course of the Court the Plaintiff was not bound to give the Defendant notice of the speeding a writ of Inquiry of damages, but the Defendant when there was a Judgment against him, then ought to have taken notice at his peril: But that course is altered by Rule of Court, and now the Plaintiff must give the Defendant eight dayes notice exclusive of Tryalls or Inquiries in *London* or *Middlesex*, if the Defendant dwell within forty miles of *London*, and fourteen dayes notice if the Defendant live above 40 Miles distance from *London*.

2 The plaintiff ought to give the defendant: or his Attorney notice of every Tryal by *Nisi prius*, before it be tryed; but if the cause hath once been carryed down, and notice given, then the plaintiff carrying it down the second time (or if the defendant carries it down by *Proviso*) there needs no Notice.

*Of declaring upon Reversall of Utlaryes,
and Bayl to writs of Habeas Corpus.*



1. **I**F the Plaintiff do not declare with-
in two Terms after the Utlary re-
versed, or Bayl put in upon a Removall
by *Habeas Corpus* the defendant is not
bound to accept the declaration after-
wards. But in such case the defendant
cannot *non prof.* the plaintiff, and have
costs for want of declaring because
the defendant was not arrested upon a
common writ.

*Of Appearing in Quare impedit and wast
upon the distress.*

IF the defendant in *Quare impedit*, or
in a writ of wast doe not appear up-
on the distress, it is peremptory to him
and the Judgment shall be entred against
him of Course, without moving of the
Court.

*Of declaring in causes removed, aswell out
of Inferiour Courts, as otherwise.*

1. **T**He plaintiff that declares upon
a new Original, where a cause is
removed out of an Inferiour Court, must

B b

not

*Bancus
Communis.*



not vary from his first Action, in the nature of his Action in the County, or in the summe in demand; and this new original must be brought within two Terms after the Bayl put in, accounting that Term wherein the Bayl was taken for one.

2. If the Defendant be arrested by *capias* out of this Court, and afterwards removed by *Habeas corpus*, and committed to the Fleet, and charged with this *capias*, The plaintiff in that *capias* may by course of the Court declare against the Prisoner in *Custodia* upon the *capias*; And if the defendant will not plead, Judgment shall be entred by *Nichil dicit*.

Of Arresting Judgment.

After a Verdict is given for the plaintiff, there is four dayes from the return of the *Habeas Corpora* allowed the defendant, to move in Arrest of Judgment, unless the *Habeas corpora* be returnable the last return of the Term, and in that case the defendant hath day untill the last day of the Term, and no longer: And there is no course of the Court that gives four dayes after the bringing

bringing of the *Postea*, but after the re-
turn of the *Habeas Corpora*.


*Bancus
Communis.*


*Of matters concerning the Prothonotaries;
and of the Clerks, and Attornyes of
this Court, and their Clyents.*

1. **E**Very Attorney of this Court when
he is first Sworne an Attorney,
hath an Election to settle himself and
his business in which of the three *Protho-
notaries* Offices he pleaseth; but after
his Election once made he must conti-
nue in that Office, and may not re-
move from Office to Office, without the
licence of the Court, upon just cause
shewed against that *Prothonotary* from
whose Office he would remove; And
for the Clerks they have an Election to
be of which Office they will, before they
are admitted, but when they have made
their Election and are once admitted in
an Office, they are concluded, and may
not remove without leave of the Court.

2. So likewise where a cause is first
begun, in that Office it must continue to
the end of that cause; As where the de-
claration is entred, there the Issue and
Judgment must be entred; and the Exe-
cution or *Scire facias* upon that Judg-
ment must be in that Office where the

Bancus
(communis.)



Judgment is ; And so it is for *Habeas Corpus* upon Bayls, the *Procedendo* must go out of the same Office from whence the *Habeas corpus* went ; And if there be a *Scire facias* upon the Bayl it must be in the same Office where the Record of the Bayl is.

3. And likewise every Clyent hath an Election to chuse what Attorney he pleaseth ; but after he hath chosen an Attorney in a cause, he cannot change him without leave of the Court, upon just cause shewed against him.

Of Tryals at Barr.

FOR Tryals at the Barr, they are called in course ; the chief *Prothonotary* hath the first turn, the second *Prothonotary* the second course, and the third *Prothonotary* the third Course : And the same course (as hath been before observed) is for reading of Records of Demurrers, and special Verdicts, And the like for Wagers of Law, which are alwayes called upon the *quarto die post*, after the Barr hath been once heard over.

Of an Habeas Corpus.

*Bancus
Communis.*



1. **T**HE *Habeas Corpus* is the warrant to bring the Prisoner to put in Bail, and the Bayl must be taken upon the return of the writ, or within some few dayes after, and in the same Term, and then shall be intended to be taken upon the return of the Writ; And therefore where the writ is returnable upon a day certain, there the course is to put in no day for the taking of the Bail; but where the writ is returnable *immediate* there must be a day of the caption, which must be some day before the end of that Term next after *Teste* of the writ,

Of declaring upon Mesne Process.

1. **B**Y the Common Practice of this Court now used, if the defendant be arrested upon *Mesne process* in *London*, or any other County or City, the Plaintiff may declare against him in such County or City where he was so arrested, or may lay his Action in any other County in *England* at the plaintiffs election: And the defendant is bound to accept of as many Declarati-

*Bancus
Communis.*



ons by himself or his Attorney in any Action whatsoever at the same plaintiffs suit (real Actions onely excepted) as the plaintiff hath cause to declare against him; but the defendant is only bound to put in bail to the first Action, (if the case so require) and only to appear to all such other Actions as shall be brought against him by the same plaintiff, as aforesaid, and to receive declarations thereupon, without putting in Bayl thereunto (except in the first Action onely, as aforesaid.

2. But *Note*, That the defendant is not bound by the Rules, or usage of this Court to accept of declarations at any other persons suit, then the Plaintiffs; at whose suit he is arrested, as the Course is in the Court of Kings Bench, for that there the defendant is supposed to be in *Custodia Marrescalli*, and so to answer, &c.

Of Nonuits.

1. **U**Pon any writ sued out of this Court retornable in any Term, the Plaintiffe hath that Term wherein the writ is retornable, and untill the last day of the subsequent Term, to declare against the defendant, but not afterwards:
And

Bancus
Communis.



And if he doth not then declare, the defendant upon a Rule given in that Office, where the plaintiffs Attorney to the writ enters, may there sign a *Non prof.* And take out Execution thereupon for his costs. And there is the same time allowed the plaintiff to declare in the Kings Bench, otherwise the defendant may there have a *Non prof.*

2. In like manner upon pleading *Non assumpsit, nil debet per Patriam*, or any other general Issue, the Defendant may after a Rule given, nonsuit the plaintiff (if he doe not enter his Issue) and get costs signed by the *Prothonotary*, and enter up Judgment after this manner, *Quia non junxit in Exitum, nec ulterius prosecutus est breve suum prædictum.*

3. But if the Defendant doth plead as before, and the plaintiff replies not in due time, the defendant must move the Court to give a day peremptory for the plaintiff to reply : which if he doe not by the time limitted, Judgment shall be Awarded against him *pro defectu Replikationis* : For in this case the defendant cannot have Judgment of Course without Motion in Court.

Bancus
Communis.



Orders of Court.

An. Regni
Regis Hen-
rici 6. 35.

Hereafter do insue the good Ordinances and Rules made as well by the Kings Justices of this said Court of the Common-Place in time past, as by the said Justices now being, for the good Rule and Order of this said Court, which same now Justices do charge and command every of the said Officers and Attorneys surely well and truly to observe and keep, upon the pains limited in the foresaid Ordinances.

Ordinationes sequen. irrotulantur Termino Sancte Trinitatis Anno Regni Regis Henrici Sexti post Conquestum tricesimo quinto Rotulo CCCCLxxxiiii ut patet ibidem Johannes Prisot tunc Capitalis Justic' de Comuni Banco, et Nicholaus Ayston, Petrus Arden, Robertus Danvers, Robertus Danby, Walterus Moyle, et Johannes Nedeham, Justic' de eadem Banco.

Memorandum, That forasmuch as great Troubles, Subtilties, Falsehoods

of the Court of Common-Pleas.

25

hoods and Disceits, have been caused and done before this time in the Kings Court of the Common Place, as well for lack of attendance of the Officers of the same place, as by comers and sitters within the same, that be not sworn, ne have not to do within, there ben certen Ordynances made at this *Vtas* of St. *John* the Baptist in the year of the Reign of King *Henry* the Sixth after the Conquest the thirty fith, by *John Prisot* Chief Justice of the said Place, by the advice of all the Judges of the same, in form following:

Bancus
Communis.

1. First, That every Prenotarie, Philizer, Exigenter, Kings Clerk, and every other Officer of the same Place, such and they and their Predecessours have used to occupy their Offices in their proper persons, and they or their Deputies sworn that have used to occupy their Offices by their Deputies, from henceforth attend upon their said Offices in their places accustomed for the same, and occupy them in their proper persons, upon pain of Forfeiture and lesing of their said Offices. Alwayes forseen, that if any of the said Officers for sicknes or other causes reasonable be licensed or excused by the Chief Justice
of

Bancus
Communis.



of the same Place for the time being, that he be not prejudiced by this Ordinance.

2. *Item*, That none of the said Officers or Deputies take upon them to licence or do set any Clerk or other in any of their places, or by them to occupy in their said Offices, or for any other cause, without Licence of the Chief Justice for the time being, saving such as ben accustomed to have their Clerks sitting by them, that is to weete, everych of the Prenotarics two Clerks, the Clerk of the Streets two Clerks, the Keeper of the Writs or his Deputy one Clerk, upon pain of Imprisonment and making Fine to the King therefore; Nother that ne man take upon him to syt within the said Common Place, that is no Officer that hath no place within, without leave of the said Chief Justice, or Justices, upon the same payn.

3. *Item*, That none Attornev, ne none other make any manner writ or process in aney Officers name of the same Place, saving only every Officer in his owen name, ne intromytte in any other mans Office, ne of any thinge that pertyneth therto, without leave of the Chief

of the Court of Common-Pleas. 27

Chief Justice of the same Place for the *Bancus*
tyme belnge, or of the same Officer in *communis.*
whose name he writteth, and the same
Officer will allow and affirm the same,
upon payne of Imprisonment, and ma-
king Fyne to the Kinge, as is afore-
said.

Memorandum, For as much as many *Rules of both*
grete inconveynences and errors *Courts of*
daylie be founden aswell in the Kings- *putting in*
Benche, as in the Comen Place, for non *Warrant of*
putting in of Warraunts of Attorney, yt *Attorney.*
is ordeyned and agreed by the Assent
of all the Justices of bothe the said Pla-
ces, That in every Plee or Ymparlance
entred by any person as Attorney in
any of the said Courts, that he so named
Attorney put in his Warraunt the same
Term of Plee or Ymparlance, under
payne of forgoeing the Office of Attor-
neship of that Place, and to be comynyt
to Prison, and to make Fyne after dis-
cretion of the Judges where any such
disceit shall happen to fall.

Hereafter

*Bancus
Communis*



Hereafter do ensue the Fees belonging to the Prenotaries, Keeper of the Wryts, the Clerks of the Treasurehouse, and hys Clerks, and the Phylyzers for comen processe.

Prenotaries for entres of Pleees and Judgments.

Inprimis, for every Comen Declaracyon, comen Plee in Barre, comen Replicacyon and comen Rejoynder in Pleees personal, whether the Defendant appear in proper person or by Attorney—} *xii.s. ii.d.*

And for every Plee real—} *ii. s.*

And for every Plee personal pleded by a Serjeant—} *ii. s.*

And if it be matter concyninge a hole Rolle or more, both parties to pay for a Rolle, after the rate of every Rolle—} *vi.s.viii.d.*

And for every Judgement or satisfaction in Actions personal. } *ii. s.*

And

of the Court of Common-Pleas. 29

And for every Judgement
or satisfaction in Actions }
reall ————— } iii. s.

*Bancus
Communis*

And for every Exempli-
fication in Writs of Entre }
upon Vouchers or confession } ii. s.

And to the writer of the }
same Exemplification — } viii. d.

And for every other Ex-
emplification upon a double }
Voucher ————— } iii. d.

And to the writer of the }
same Exemplification — } xii. d.

And for every other Exemplification
of grete length to take for the same af-
ter the rate of the length thereof.

Custos



Rules and Orders

Custos Brevium.

Inprimis, Yt is considered, that by reason of Writs put in after the day, many men be arrested, to the grete rebuke of Attorneys, and Schlaunder of the Court, wherefore there is set a direction by the Court, that none Original Writ nor *Plur. Cap.* be put in after the last day of the Term.

Item, The said Officer ought daily to bring to the Court the bundel of Writs of the Term present to be seen and occupied by such as have Authority so to do, without any thing paying therefore.

Item, for seing a bundel of the last Term, he ought to have but _____ } i. d.

Item, For seing a bundel of every other old Term he ought to have but _____ } v. d.

Item, He ought to have nothing for any Exigent, though it cometh in returned after the day, because it is for the Kings advantage- }

Item,

of the Court of Common Pleas.

31

*Bancus
Communis.*

Item, He ought to give Attendance in his owne person, or by his sufficient Deputy at all convenient times, that Officers may take out Writs for processe and other necessary causes, without any mony paying therefore. ————

Item, He ought to take for the receyt of a hole retorne of one shire coming in after the day ———— } viij. d.

Item, He ought to take for the retorn of an Exigent returned utlawed in an old Terme ———— } xx. d.

*The Clerke of the Tresurhousse and
his Clerks.*

I*Nprimis,* For Exemplifications and writeing of the same, to take therefore as afore hit is limited to the Prothonotaries, and nothing to be paid for the serch yf the parte bring the Number Rolle with him —

Item,

Bancus

Commitnis.

Item, For every Record } ij.s. i.d.
 of Nisi Prius ————— }



Item, To the Secondary }
 for writeing and examining } iiij. d.
 of the same ————— }

Item, For a Sci. fac. upon } vj. d.
 a Charter of Pardon ————— }

Item, For a Superf. upon }
 Mainprize, which shall not } ij. s.
 be taken except the De- }
 fendant be in proper per- }
 son ————— }

Item, For a Bill of Bayle } iiij. d.
 thereupon ————— }

Item, For writeing, ex- }
 amining and certifying of } xij.s. j.d.
 every Writ of Error ————— }

Item, For the Fees of a }
 Chartre of Pardon upon an }
 Utlawry ; that is to say, for }
 the Certificate of the Re- }
 cord, 2 s. 1 d. and to the } vj.s. xi.d.
 Warden of the Fleet, 2 s. 4 d. }
 and for his favour, 20 d. }
 and for the Sci. fa. 6 d. and }
 for the Bill of Baile 4 d. — }

Item,

of the Court of Common Pleas.

33

*Bancus
Communis.*

Item, Officers and Attorneys ought to see the Essoine Rolles and other Rolls, of old Termes for the assurance of their matters and proces, without any thing therefore ————

Phylaser for Common Proces.

Item, Inprimis for every *Cap. pone* and distresse in Actions of Debt, Detinue, Account and Trespace of common Proces ———— } *iiij. d.*

Item, For a *Cap.* and a *Pone*, or a *Cap.* and a Distresse in one Writ, in every of the said Actions ———— } *vj. d.*

Co

Order

Bancus
Communis.*Orders of Court.*

FOr redressing the slackness of Attorneys in paying to the Prothonotaries for their Entries, and in taking copies of such Entries of their Clerks and paying them for the same.

*De Termino Sancti Michaelis anno regni
Elizabethhe dei gratia Anglie Francie
et Hibernie Regine fidei defensoris &c.
Sexto et septimo.*

VVHereas all Officers as well in this Court as in all other the Queenes Majesties Courts of Record at Westminster, (the Prothonotaries only of this place excepted) are presently paid their Fees during their Offices, and the Attorneys of late time have been very slack in paying their duties to the said Prothonotaries for entering of their Clyents matters, and in taking coppies of the same entries of their Clerks, and in paying for the same.

It is Ordered by the Justices of this Court, at the request of the said Prothonotaries, and for the advancement of their

of the Court of Common-Pleas.

35

their Clerks, whereof many by Gods grace shall grow good Prothonotaries hereafter to Serve this Court, That all and every the Attorneys and Clerks of this Court sholl pay to the Prothonotaries aswell all their debts due before the beginning of the Term, as also for all their Entryes and proces that shall be due this Term before the last day of the next Term before last day of the next Term; And that all such Clerks and Attorneys that now be or hereafter shall be, shall come and pay to every of the said Prothonotaries for entring all his and their Clyents matters, in every of their Offices sotrhwith as heretofore they have done, and if any part thereof shall happen to be unpayd in the Term wherein his Clyents matters shall be entred, then the same Attorney shall pay the same before the last day of the Term next after the Term wherein the matter shall be entred, and the same Attorney upon Complaint to the Court of his default, and his name given to the Clerk of the Warrants by the order of this Court to be put out of the Roll of Attorneys, and no longer to exercise the Office of Attorney here in this place, And furthermore, that none of the said Prothonotaries do permitt and suffer a-

*Bancus
Communis*



*Bancus
Communis.*



ry of the said Attorneys to be indebted unto him for any of the Causes aforesaid by any longer time then is above limited, without complaint to this Court to be made as abovesaid, upon payne of amercement or fine for every Attorney so suffered by him to be indebted, to be assessed and imployed at the discretion of the said Justices.

Item, it is Ordered, That the sayd Attorneys shall Termly take coppies of the said Prothonotaryes Clerks of every matter whereunto they shall appear for their Clyents, And pay for them the fees due for the same ; And that no coppies of demurrers nor of any other matter entred with the Prothonotaryes to be made, but only by the Prothonotarys Clerks, untill Judgment be entred. And if any Attorneys shall refuse to take and pay for their coppies as is aforesaid, that the said Attorney upon complaint thereof made to this Court, to pay forthwith to that Clerk proveing this Complaint, the Fees, or else to be expelled the Attorneys Roll, and not to be readmitted without a Fine at the discretion of the said Justices.

Item, That no continuance or discontinuance, no Alteration or amendment be made in any Roll of this Court, nor yet

of the Court of Common-Pleas.

37

yet any alteration or amendment to be made in any writing going out of any Office of this Court by any Attorney or his Clerk or any other person, but only by the Officer or his Clerk in whose Office the same shall be made or entred, upon pain of Imprisonment, and further to make Fine at the discretion of the said Justices.

*Bancus
Communis.*

And forasmuch as it is thought by the Justices, that the Attorneys Fees of this Court are sufficient Fees for every of them to give his continuall Attendance here upon his Clyents causes, and that they being overmuch occupied with suits in other Courts, have no such regard nor care of the suits here as meete it were they should, and thereby and by there absence they not only slack their Clyents causes in this Court, but also are causes of many Errors and discontinuances of the same for lack of their good diligence, to the hinderance of their Clyents and great disorder and trouble of this Court, For the Reformation whereof, and increse of knowledge in Attorneys in such suit as belong to this Court, *It is ordered,* That every such Attorney of this Court shall satisfie himself with the suits in the same, and forbear to be towards any causes as Plaintiff directly.

*Bancus
Communis.*



indirectly in any other the Queenes Ma-
jesties Courts here at *Westminster* other
then causes touching themselves, and the
pursuit of Proces and writs returnable
here, upon payne for doing the contrary
to be expelled out of the Attorneys
Rolle of this Court, and further to make
Fine at the discretion of the Justices.

Item, To avoid Shifts and Practises
for the delay of Executions It is orde-
red, The Clerk of the Treasury shall
make no certificate or return of any writ
of Error to reverse or affirm any Judge-
ment given in this Court upon a Verdict
or demurrer in Law; untill some ma-
nifest pregnant Error therein be notified
by the party or some of his Councell that
sueth the writ of Error, unto the Justi-
ces of the Bench, or to one of them at
the least.

*James Dyer,
Anthony Breim,
Richard Weston,
John Weleb.*

Additio

*Additio de Terminis Pasche Anno Regni
dictæ domine Regine nunc vicesimo
tertio.*

IT is further ordered by the Justices of
this Court for the avoiding of deleyes
of Execution that the Clerk of the
Treasury for the time being shall not
make any Superseas upon any writ of
Error to reverse or affirme any Judge-
ment given in this Court upon any ver-
dict demurrer in law or confession untill
some manifest or pregnant Error therein
be notified in form aforesaid.

*James Dyer,
Francis Wyndham,
Thomas Meades.*



The manner of Reforming the Abuses in the Members of the Court of Common-Pleas by Sir James Dyer Knight, Lord Chief Justice of the said Court.

Reformatio omnium et omnimod. Falsi-
tatum, Contempt', Misprisionum, ac
aliarum Enormitatum, Officiariorum
Clericorum, Attorn', ceterorumq; Mi-
nistrorum Curie Domine Regine de Ban-
co apud Westm. per Jacobum Dyer
Militem Capitaletm Justic. ejusdem Curie
et Sociis suis Justic. ipsius Domine Re-
gine ibidem de Termino Pasche Anno
Regni Domine Elizabethe nunc Regine
Angliae post Conquesum nono.

The Writ to Summon the Jury of At-
torneys to inquire of the Misde-
meanours committed by the Offi-
cers of the Court.

Elizabethe Dei gratia Angliae, Franciae
et Hiberniae, Regina fidei defensor, &c.
Custodi Palatii nostri Westm. salutem. Praeci-
pinus tibi quod Ven. fac. coram Justic. nostris
apud

of the Court of Common Pleas.

41

Bancus
Communis.

apud Westm. die Lune prox. ante Festum
Sancti Georgii duodecim tam Officiarios
in Banco coram Justic. nostris apud Westm.
quam de aliis Clericis & Attorn' in eodem
Banco existen' ad inquirend' de et super
omnimod. falsitatibus rasuris contemptibus
misprisionibus et aliis Offensis in eodem
per quoscunq; perpetrat'. Ac ad ulterius
faciend' quod Curia nostra tunc ibidem fore
viderit faciend'. Et babeas ibi nomina
prædictorum Officiariorum Clericorum et
Attorn' et hoc breve Teste J. Dyer apud
Westm. duodecimo die Februarii Anno
Regni nostri nono.

Whetley.

Christoph. Hole,	{ Jur' }	Geo. Harrison,	{ Jur' }
Willielmus Read,		Will. Brand,	
Tho. Foster,		Job. Jackson,	
Rolandus Durant,		Will. Rudd.	

Thomas Cobb,	{ Jur' }	Job. Franklyn,	{ Jur' }
Will. Badger,		Job. Walmer,	
Will. Forrest,		Will. Dretre.	
Thomas Freeman,		Job. Ford.	

The

Bancus

Communis.



The Lord Chief Justice his Charge to
the Inquest.

YOU Officers, Clerks and Attornyes
summoned to be of this Inquest,
Forasmuch as it is very expedient and
necessary sometime to have an Eye to
our Officers and Ministers; and to look
upon this our Court for the Mainte-
nance and preservation of the good or-
der, course and antient Customes of the
same; And for that I find divers and
sundry Records left unto us by our
Ancestors that leadeth us unto the same;
And because as *Chawcer* very well saith
in his Treatise *de Melibea et Prudentia*,
That the Judge that seeth faults and
winking at them, doth not correct ne
punish the same, doth as it were by his
sufferance provoke and stirre such Ma-
lefactors to be faulty again, and to con-
tinue in their former evill doings:
Therefore it was thought good now at
this time by me and my Brethren to
call you together.

And albeit since the time I have sit
here you have not had the like Inquest;
yet you have not failed at divers and
sundry times (as occasion served) of
divers Monitions and Adhortations
which

of the Court of Common-Pleas. 43

which tended to the same end, and served for the same purpose. *Bancus Communis*

And amongst all other Courts and places of Justice within this Realm, this Court hath been ever revered and had in great Estimation, and hath belonging unto it more Officers then any other Court hath; And therefore many times most faults, errors and negligences are found in it; for where the greater number is, there ever for the most part are the most faults and misdoings (such is our frailnes) what should be the very and true cause of it I cannot tell, except it be as Terrence saith, *Mala mens, malus animus*, which as two Spirits and Furies of Hell, the common stirrers up of all vice and naughtines, provoke and pricke men forwards to do all evil, or whether it be this greedy and inordinate desire to be suddenly enriched, that men cannot abide and tarry time and space, but in all post hast must be rich, and have aboundance by and by; This posting and hasting, and running after Riches, this great thirst and covetousness is reprov'd and condemned as most detestable of the verie Gentills, and Heathen Poets.

For it is called of them, *Amor sceleratus habendi*, the which for the wickednes

Bancus
Communis



nes that is in it, is called, *The wicked desire of growing rich*; be the riches gotten by hoocke or crooke they care not how, *Per fas aut nefas*.

Another speaketh unto Riches, and saith, *Quid non mortalia pectora cogis auri sacra fames?* Thou wicked desire and hunger of gold to what drawest thou not men, and what compellest thou not man to do. And Saint Paul saith that it is the very root and spring of all Evil, *Cupiditas* (saith he) *est radix omnium malorum*; For as all things do spring and are nourished from their roots, so where this wicked root is laid and hid, from thence springeth most wicked fruit, and all manner of Evil.

This Writ that you shall enquire upon maketh mention but of four Points in speciall, in generalltie of more; The first of them is, that you shall inquire *de omnibus falsitatibus*; the second *de raturis*; the third *de contemptibus*; and the fourth, *de Misprisionibus*. You that shall inquire of them, some of you are *Officiarii*, some *Clerici* that write in Offices, and most of you Attorneys.

You are the persons allowed by the Law to inquire of these things, you best can for your Vocations and Knowledge, and according to the form of the antient
Records

of the Court of Common-Pleas. 45

Records you are now appointed to the *Bancus*
same; I doubt not but that you will *Communis*
consider your duties herein, remembring
how good and honest a thing it is for
you and us all that are Members and
partyes of this Place, how necessary and
profitable for all Suitors to have this
our Court purged and kept cleane from
all such corruption, false and subtile
dealings, Errors, negligences, &c. soe
you shall serve very well the Common
Weale, and our Prince, and above all
please God.

I will not charge you with all such
faults as have been done long since, for
we have had the Queens General Par-
don that hath pardoned all Contempts,
Disceipts, Negligences, &c. But onely
with such Faults as have been done since
the Pardon, that is, the six and twen-
tieth day of *September* or three dayes
befort *Michaelmas* last: And somewhat
to open unto you the Points;

1. You shall understand that *Falsitas*
as I take it, is where a man inwardly
will set a shew, a face and countenance
that he doth well, and truly knowing
inwardly and to himself that it is not
so, but meere subtlety and falshood:
As for Example, if he will sue forth of
purpose

*Bancus
Communis.*



purpose false process, or wittingly of himselfe will Minister a false and torrein Plea, not takeing it of his Clyent. There is nothing more contrary to Justice then is Falshood and Deceit.

2. The second Point is *de Rasuris*, and of Rasures you shall understand that there are two kinds, the one kind lawfull and tolerable, as when the Clerks before the Rolls be put in, will for the amending and making perfect of the pleadings rase the Roll, or for putting out of blots; and these Rasures are somewhat to be born with, for that many of the young Clerks are not so perfect, but that sometimes in their writeings they shall misse and faile; I was sometime a Clerke my selfe, and therefore I do know the experience of it.

Another kind of Rasures there are noxious and hurtful, as to rase and alter them * after they be put in and filed in the chiefeft and most principal parts, by the which they change and pervert them quite, and cause them to carry another or contrary sence, and to subvert the whole matter, and to chop and change in new Writs, and new Rolls when the old are lost; which if it be told us, then we may licence them

* *The Rolls.*

of the Court of Common-Pleas.

47

to put in new, but they may not of themselves.

Bancus Communis

A Record is a Witnes of the truth, and of the time of much longer continuance then any man is, and therefore they have been ever most charely and warily kept and looked unto; they give light and warily kept and looked give light unto posterity, tell them of things done long before; And in doubts and controverlies instruct them with the truth; The law termeth them *Thesauri*, that is to say Treasures or Jewells, and calleth the place where they are kept, *The Treasury*, that is to say, the house of Treasure; such is their worthines, their dignity: And therefore every man ought to take heed how he useth them, after what sort he deal-eth with them; they are true and just, and may not be touched and defiled with false and unjust hands. This thing was very well considered in Henry the Sixths time, who enacted in the eighth year of his Reigne, That to alter, rase, imbesell any writ, Record, &c. after that it was filed and put in, should be Felony, and inquirable in this Court.

Your third point is *De contemptibus*, that is, of such as contemne and breake our Orders and Rules, and will not ob-
bey

L

*Bancus**Communis.*

bey the Orders of this Court ; Within this are not onely Officers, Clerks, and Attorneys contained, but also any other Stranger that contemneth the same ; As wee read of a contempt done to this Court in the two and twentyeth yeare of the Reigne of King *Henry* the Sixth, Where a Squier belonging unto the Kings Court did beat here at *Westminster* an Attorney for being against him, and earnest in his Clyents cause, he was indited here in this Place for it, found guilty, and paid forty pounds for a Fine.

Your fourth point is *Misprision*, and you shall understand that *Misprision* is where a man knoweth Treason or Felony, to be done, and yet doth conceale it, and keep it close ; For men are not onely bound by the Law to doe noe such thing themselves, but alsoe bring them to light and disclose them in others, and so to further their punishments. There are divers kinds of *Misprisions*, some of Treason, some of Felony, some for uttering of false Coine, if he knows it to be false.

And another kind of *Misprision* there is, where a man drew his dagger at a Judge sitting in Seate of Judgement, for the which he forfeited all his goods and lands,

lands and had his right hand cut of. These *Misprisions* are punished by discretion and Fine, and never by death.

*Bancus
Communis.*



The *Misprision* you shall inquire of is *Mispriso Clerici*, and much of the nature of that *Misprision* that we read in 2 R. 2. was found by a Justice of Peace, who among the Inditelements that were indorsed *bille vere*, had foisted in one Inditelement that was not indorsed *billa vera*, he lost his place of Justice of Peace, and paid Fine.

Soe to put in writs not sealed, and by that meanes to beguile the Queene; Albeit this alsoe may be put under the first Member, that is falsehood. Also if any leave out or change the Addition or names of the Partyes to cause Error, &c. or put in or leave out whatsoever pleaseth them. Alsoe the statute of *Westminster* the first maketh mention of Pleders, and how they are inquirable of.

The cause of these faults and errors many of them doe arise by reason that the Clerks doe not diligently examine their writings and Rolls; they will take money, but they will not take paines to looke backe to that they have done, that it may come well and truely out of their hands.

Bancus
Communis.



And when Error is found here in this Court, it is a great greite to us that sit here to have things done truely sincerely and as they ought to be done, to see our Acts determination and Judgements adnihillated and brought to nought, our Court slandered and evill spoken of, our cares and labours made void and frustrate by the onely negligence of Clerks and Ministers, and the poore man and Clyent that hath suffered this harme and losse, he getteth him home with a heavy heart by weeping Crosse, and cryeth *oleum et operam perdidit*, I have lost my labour, my money, my cause, all is lost, what shall I now doe; Then he beginneth to thinke evill of us that are Judges, and to suspect our Skill, then he curseth his Councillor and Attorney, and speaketh evil of the Law, which of it selfe is most just: In which cases we cannot, nor may not of very right and Justice but cause such negligent Attornyes to restore unto their Clyents their Costs and charges. Of these and other like negligences generallly; And of such as be late and slack comers to the Term by reason whereof their Clyents matters goe not forwards, you shall further inquire, and wee shall deprive such of their Attornyship. I will appoint you
noe

of the Court of Common-Pleas. 31

noe time certain, but that you may doe *Bancus*
it at your leasures in time convenient *Communis*
between this and *Michaelmas* Term ; If
you will have such as shall give Evi-
dence to be sworne, we shall find the
meanes they shall be sworne : And this
is all I have to say to you at this time.



Orders of Court.

M.
An. 15 El.

ORders convenient and necessary for Reformation of certain Abuses and Defects in Officers and Ministers attendant, and belonging to the Court of the *Common Pleas*, set down by the Justices of that Place, *Termino Sancti Michaelis, Anno decimo quinto Regni Regine Elizabethæ.*

1. First, That every Attorney of this Court shall give his attendance at the Court by the second Return of every Terme, saving onely *Michaelmas Terme*, and that Terme by the third Returne at furthest, upon pain to forfeit to the Box for every such offence 3 s. 4 d. unless he shall have a reasonable Excuse well proved.

2. Item, That no Attorney of this Court shall give, let to rent, or lend his name to any person or persons thereby to practice as an Attorney, nor shall willingly, wittingly or fraudulently permit, and suffer any person or persons

of the Court of Common-Pleas. 37

*Bancus
Communis.*

to use his name for any Apparence or otherwise, Except in common Recoveries, upon pain to forfeit for the first offence xx s. and for the second such Attorney and Practizer to be expulsed the Court.

3. *Item*, No Attorney shall sue any processe in any reall Action or *Recordare*, nor any Clerk shall make any processe, unless the Original Writs thereof be first taken out in the Remembrance of the Philizer of the same where the Action shall be commenced: And the same Philizer or his Clerk only to make the processe thereof, upon pain for every such Attorney or Clerk to pay such Fine as the Court shall Award.

4. *Item*, That according to the ancient Custome of this Court, no person shall be admitted as a Deputy of Record unto any Sheriff, unless he be an Officer or Attorney of this Court; And that one of the Deputies of Record of every Sheriff shall be resident or conversant within his Sheriffrick, except *London*, *Middlesex*, and other Cities and Towns that be Counties, *Wales*, and the County Palatines of *Durham*, *Lancaster*, and *Chester*; And that one of the said Deputies shall be Attendant upon this Court by the second Return of every

Bancus
Communis.



Term at the furthest: And so to continue to the end of the Term, upon pain as is last abovesaid, all reasonable excuses of absence to be allowed.

5. *Item*, That no person or persons shall return any Writ of Entry in the *Post* for a Common Recovery to be had, or Writ of Covenant for a Fine to be Levied, or any other processe for the which Fees do belong to the Under-Sheriff, or the Sheriffs Deputies, unless they pay the old accustomed fee for the same, and the same Writ to be assigned by the Under-Sheriff or one of the Deputies as is aforesaid, upon pain to forfeit for every such default x s.

6. *Item*, That every Attorney, Clerk or other person that shall sue forth any Recovery, and use any Attornyes name in the same, shall pay to the same Attorney whose name shall be used, the accustomed fee, or otherwise satisfie the same, upon pain to pay for every such default as is abovesaid, vi. s. viij. d.

7. *Item*, That all Sheriffs, Under-Sheriffs, or Sheriffs Deputies, shall retorne all Writs and Common processe that shall be delivered to their hands,
or

or of Record, and deliver them or send them returned into this Court within eight dayes next after they be retornable, upon pain of every such Sheriff or Under-Sheriff that shall offend, to pay as abovesaid xl. s. at the least.

*Bancus
communis.*



8. *Item*, That no Officer or Clerk of this Court shall either receive, make or deliver any manner of Writ, Proceffe, Record of *Nisi Prius*, or Warrant of Attorney, of, to, or for any person or persons to enter any matter or matters, unless the party himself his Attorney or his Attornyes Clerk well known, or some other Attorney for him or in his name, do Orderly deliver or procure and sue forth the same, upon pain to every Officer or Clerk for every such default to pay as is abovesaid xl. s. And that no Attorney, Attornyes Clerk, no Officer or any other Clerk of this Court, shall sue forth or procure by any means directly or indirectly any *Latitat*, or shall solicit, prosecute or follow for the Plaintiff, or plead to any Action, Bill or Suit upon any such processe of *Latitat* in any other Court then in this Court, upon pain to forfeit for his first Offence xl. s. and for the second *ipso facto* to be expelled the Court.

Bancus

communis.




9. *Item*, Provided alwayes, That the Lord Chief Justice of this Court, and every Justice of Assize having a Circuit, may appoint such and so many of his and their Clerks to sue forth Fines and Recoveries of their own drawing as to them shall seem meet and convenient, so that the Fees of the Retorns thereof be duly paid or satisfied to the Sheriffs Deputies accordingly.

10. *Item*, That no Prothonotaries Clerk being an Attorney shall draw up any Paper or Book of the Office where he is a Clerk, wherein shall be any special pleading. And in which matter the same Clerk shall be Attorney with the Plaintiff or Defendant, Demaundant or Tenant, or without the assent of the other party or his Attorney, upon pain to forfeit as is abovesaid for every default xl. s.

11. *Item*, For Reformation of the Excessive and unprofitable number of Attorneys of this Court, *It is Ordered*, That all such Attorneys as have been absent, and not given their due Attendance here according to their Oath, or that have not been towards any cause
or

of the Court of Common-Pleas. 41

or matter in this Court for the space of *Banua*
two years last past, shall be put out of *Communis.*
the Rolle. And the like Order to be
kept hereafter. 

12. *Item*, That no Sherriffe, Under-Sheriff or Secondary, shall take for the allowance of any *Supersedeas* upon any *Capias* or *Exigent* above xij. d. upon pain to forfeit for every such default x. s.

13. *Item*, That no Officer or Clerk of this Court shall take for any Entries, Processe or Search, above the old accustomed Fees, but of the Benevolence of the party his Attorney or Deputy, upon pain for every such default as is abovesaid Ten shillings.

14. *Item*, That no Officer of this Court shall take or receive of any Attorney of this Court for any Processe, Search, or entry of any proces, plea or matter commenced or prosecuted in his or their own name or names, any manner of Fees, but as of old time hath been accustomed, unless the Court for some speciall cause otherwise Order it.

15. *Item*, That no Attorney shall be Admitted or put in to be Attorney in the



Rules and Orders

the Record of *Nisi Prius*, but such as are Attornyes in the said Suit by the principal Record thereof; And that no Attorny of this Court shall appear as Attorny for the Plaintiff at any *Nisi Prius* out of this Court only.

16. *Item*, That no Attorney here prosecute or sue any forrein proceſſe by Original or other proces in any personal Action, other then Actions of Debt only, but in the proper Shire where the cause of Suit shall grow and arise without Licence of this Court, upon pain of forfeiture for his first Offence forty shillings, and disability and expulsion for his second Offence.

James Dyer,
Roger Manwood.

Orders



Orders of Court.

WRits, Proces and Entryes to be made by the Philazers of this Court only.

M.
An. 15 &
16 Eliz.

*De Termino Sancti Michaelis Anno Regni
Regine Elizabethæ decimo quinto et
decimo sexto in Communi Banco.*

First, All manner of *Capias alias*, and *Plures*, and all other incident proces before appearance of the Defendant in all Actions wherein proces of Outlarie do lye.

Item, All grand *Cape's*, *Pones* and *Distringass's*, as well peremptory as infinite grounded upon any Original.

Item, All Writs of *Supersedes* upon any *Capias* awarded out of their own Offices.

Item, All Writs of *Retorn' habendum* upon Nonsuits before appearance, Writs of second deliverance before appearance and Declaration, Writs of *Capias* in *Withernam*, *Alias* and *Plures*.

Such

Bancus
Communis



Such Entries and Proges as Philazers as well as Prothonotaries may make.

First, the Views in Pleas reall, and Writs upon the same.

Item, Imparlance upon plain and common Declarations in Plees personal or mixt, and also the General Issues *ad Patriam* in such Actions, and all *Venire facias* upon such general Issues.

Item, In Debt *Non est factum*, General or Special, so as it needeth not a Ser-jant's Councel, *per minas, per duritiam emprisonamenti Deins, age, Rienz, per discent*, Release or acquittance of the Plaintiff, whereunto *Non est factum* is pleaded, condition performed, so as it doth not require a Serjeants Councel, *Plene administravit, Ne Unques, Executor.*

Item, In Trespasse *Non culpabilis* general, and *Non culpabilis ad Novel assignement son Franck-Tenement et insult. querent. propriis*, and in Actions upon the Case the general Issue, and all *Venire facias* upon such issue, and to deliver them of Record if the party pray it,
and

of the Court of Common-Pleas. 45

and continuance upon the Plea Roll *Bancus*
until the *Habeas Corpora* awarded. *Communia*

Item, The Fee of every Four-penny Writ to be increased and made Six pence, so that the Original Writ with the Return thereof be duely taken out in the Remembrance, and otherwise not.

James Dyer,
Richards,
Roger Manwood,

Orders

Bancus
Communis.



Orders of Court.

T.
An. 24 El.

Orders convenient and necessary set down by the Justices of the *Common Pleas*, the Two and twentieth day of *June*, *Termino Sancte Trinitatis*, *Anno vicesimo quarto Regine Elizabethæ*.

First of all, Actions personal, where the debt and damages amounteth to Twenty pounds or above, the Defendant upon any *Capias* returned against him *Cepi corpus* or *Reddit se* making appearance in proper person shall put in good Bayle, that if he be condemned to answer the Condempnation, or to yield his Body to Prison, or the Sureties to pay it for him, and the Bayl to be taken in such Office from whence the Proces upon which the Defendant so appeareing did yssue, and in none other; and for the same bayle the Defendant to pay the auntient Fee two shillings four pence; (that is to say) for the Fee of the Justices of the said



said Court for examination of the sufficiency of the said Bayl, two and twenty pence; and for the Fee of the Officer taking and entring the said Bayle, six pence; and that in all other Actions personal where the debt or damages doth not amount to Twenty pounds, the Defendant to be admitted to Common Bayle to be taken and entred only by the Officer from whence the Proces upon which the Defendant shall so appear did issue, and by none other, for the Fee of four pence only to be paid for taking and entring of the same common Bayle. And that no Attorney shall sue forth any *Supersedeas* upon any *Capias* to be awarded out of this Court after the said *Capias* is delivered to the Attorney of the Plaintiff, unless such Attorney that will sue forth any such *Supersedeas* do cause Bayl to be first put in for the Defendant to answer and satisfy the Plaintiff as aforesaid. And that also the Philazers shall and may enter in their Offices the Declarations and Imparlanes of all such matters for which Bayle shall be taken as is aforesaid, if the Plaintiff or other Attorneys willingly without compulsion will have them entred with them.

Item,

Bancus**Communis.**

Item, The said Philazers shall not enter any manner of Judgement in their Offices the Judgement in Replevin before appearance whereupon a *retorno habend* is to be awarded, and likewise the Judgement in dower and Formidons by default before appearance whereupon the writ of seisir are likewise to be awarded only excepted wee call upon any imparlance, nor give any rules in there Offices for answers, nor shall enter any issues with them but only these following, *videlicet, Non est factum, nil debet per Patriam,* and *non culpa bilis* generall in trespass, and *non culpabilis ad novel* assignment, any former order heretofore in any wise notwithstanding. And the Prothonotaryes shall enter the comparence upon *Cepi corpus*, and Redd it se, as in times past they have accustomed to doe.

Item, That no writt of Priviledge be granted out of the same Court neither in Terme nor out of the Terme, without some one of the Justices hands there unto, for the fee of four pence and noe more to the Justices for every such writ.

Item, If any person (which from hence

of the Court of Common-Pleas.

65

*Bancus
Communis.*

henceforth shall be outlawed in any action personal before appearance and Judgement) doe pursue any writt of Error thereupon, the same writt of Error shall not be allowed, nor any Record removed, nor any writ *de non molestando* or *Supersedeas* granted before some manifest Error be shewed to the Court if it be in the Termtime; and if it be in the time of Vacation, then to some of the Justices, and by them allowed.

Item, None but Attorneys of this Court or Justices Clerks shall sue forth any Fines or Recoveries, upon payne of forty shillings fine, and to be committed to the *Fleet*. And that noe Officer of this Court shall suffer any such to deale in any such cause in any of the said Offices, upon such payne, and likewise to forfeit forty shillings.

Item, That noe Attorney of this Court shall suffer or assent to any other being noe Attorney of the sayd Court to practise in his name, upon payne to be forejudged the Court, and committed as is aforesayd, and the party practising in the Name of any such Attorney contrary to this Order, to be committed

E c

and

*Bancus
Communis,*



and pay forty shillings for a Fyne for every such offence, and that noe Clerke of any Prothonotary other then such as have exercised the roome and place of a Clerke by the space of seven yeares last past shall occupie or use the Roome and Office of an Attorney in this Court, and that no Clerk or servant of an Attorney shall write in any Office of Prothonotary, upon the like payn and punishment aforesaid.

Item, That no Attorney be from henceforth made but once in the year in *Michaelmas* Term upon a meeting of the Justices for that purpose ; And the first meeting for that purpose to be at *Michaelmas* Term come twelve Month, and not before.

Item, That no Attorney of this Court shall be bayle for any man upon proces awarded out of this Court, upon payn of being forejudged the Court.

Item, That if any Attorney of this Court shall absent himself two Terms together from the said Court, except it be by occasion of sickness or otherlike Urgent cause to be allowed of by the Court, then he to be forejudged the Court

of the Court of Common-Pleas. 67

Court, and to be no longer an Attorney thereof. Bancus Communis



Item, That no Officer of the Common-Place shall suffer any men to put any Attorneys name to his Remembrances, except he be the Attorney himself, or his Clerk well known.

Item, Whereas before this time divers of the Attorneys of this Court have used immediately after the end of every Term to depart and leave the suing out of their Meane proces, *videlicet*, *Capias*, *alias Capias*, and *Pluries Capias* to other persons, who not being sworn for their true dealing, have many times delivered proces to the *Custos brevium*, Philazers and Exigenters of this Court and their Clerks unsealed, although sometimes giving a colour thereof to the defrauding of the Queens Majesty of her duty arising by her Majesties Seale of this Court, wherefore it is Ordered by the Justices of this Court, That the *Custos brevium*, his Deputy or Clerk, or any of them from henceforth shall not receive any proces of any Exigenter Philazer, Attorney or their Clerk, or any of them except the same proces be at such delivery thereof apparently sealed with the Queens Majesties seale of the said

*Bancus
Communis.*



Court; And further, That any Philazer or Exigenter of this Court, or any of them, or the Clerkes of any of them; shall not from henceforth take any proceſs of any person or persons to the intent to take out the ſame proceſs in their remembrances or to File the ſame with the *Cuſtos brevisum* unleſs the ſame proceſs be delivered unto them apparently ſealed, upon ſuch pain and penalty as ſhall be Inſlicted upon every offender herein by the Juſtices of this Court.

Item, That all writs of Error and of *Certiorari* directed to the Chief Juſtices of the Common-Pleas for the time being, ſhall be firſt delivered to him before they be broken, or elſe no Record forth of this Court ſhall be removed or certified.



Orders of Court.

AN Order made the second day of May
this present Term of Easter, in the An. 5 Eliz.
Three and fortieth year of the Raig
of the Queens Majesty that now is.

Concerning Writs of Dedimus Po-
testatem.

VHereas by the antient usuage
grounded upon the Lawes and
Statutes of this Realme, there was in
every Writ of *Dedimus Potestatem* to
take the knowledge of any Fine, a
Knight or a Serjant at the Law named
and ment to be of the *Quorum*, unles
the knowledge were taken by some of
the Justices at *Westminster*, or of the
Barons of the Exchoquer being of the
Coyse; which antient usuage was du-
ly observed until about thirty years last
past, since which time such *Dedimus*
*Potestatem*s have been commonly di-
rected to persons of mean calling; and
although a Knight were named there-

Bancus
Communis.



in, yet it was but *pro forma tantum*, and he never sealed unto it, but the knowledge taken by the rest being for the most part men of mean calling, and commonly unlearned, and unskilful in such causes; by reason whereof the great and reverent solemnity which ought to have been inviolably observed in Fines is neglected. The said Fines levied with Proclamations being the highest Barrs and Records of greatest power and force, binding as well privies as strangers, unles they make their claym in due time; And yet the said Fines by such means are abused, and knowledge of Infants and Women Converts not duly examined, Idiots and such like other persons have been taken and certified by such Commissioners: And so it was this present Term of Easter, in the Thre and fortieth year of her Majesties Raign, provided in open Court by oath in a Fine taken by such Commissioners in the County of Lincoln; and divers of the like sort have been certified; as it was this day also testified by the Clerk of the Fines; which abuses and disorders are very common and great, and meet in Justice to be reformed. Therefore to prevent such great inconveniencies, and to the intent that

Fines

of the Court of Common-Pleas. 71

Fines may be taken by men of credit *Bancus* and reputation according to the Law *communis* and Customs of this Realm. It is this day Ordered, That from and after the second Return of *Trinity* Term next ensuing, no *Dedimus Potestatem* directed to Commissioners to take the knowledge of any Fine, shall be received or recovered in this Court, unless the same knowledge be taken by some of the Justices of the one Bench or the other, or of the said Barons of the *Exchequer*, or Serjant at Law, or that a Knight be of the *Quorum*: And because many Errors, faults and abuses have been and daily are committed in suing out of Fines, by reason that many unskillfull persons and such as were never brought up in this Court nor belonging to the same, do take upon them to sue out Fines; And that if any such abuses, faults or Misdemeanors doe happen touching the same through their Negligence or default, no reformation or punishment can be had they being persons unknown, *It is therefore further Ordered*, That no Fine or *Dedimus Potestatem* shall be received or recovered in this Court, unless the same be sued out by some of the Attorneys of this Court,

E c 4

Bancus
Communis.

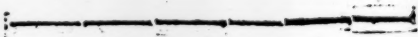


Court, or Clerk of some of the Justices of Assize, and subscribed with the name of such said Attorney or Clerk, to the intent if any Misdemeanour be committed, they may be called to answer it.

E. Anderson.

Thomas Walmysh.

Peter Warburton.



Orders



Orders of Court.

Against the Entering of Judgments by any Clerk or Attorney before the Costs be thereupon taxed or rated, and allowed by a Judge or Prothonotary of this Court.

De Termino Pasche Anno Regni Domine Jacobi nunc Regis Anglie, &c. undecimo et Scotie quadragesimo quinto; P.
An. II Jacobi Regis.

WHereas of antient time no Judgments of this Court either by *Non sum informatus*, or *Nichil dicit* could be entred of Record in this Court, without the Notice and Commandment of the Judges of this Court, nor any Costs of Suit given upon any of the said Judgments before the Costs were taxed and allowed of by some of the Judges of this Court; which usage continued a long time, until


*Banous
Communis.*



until it pleased this Court to depute and appoint the Prothonotaries of this Court to take order for the entring of all such Judgments, and to tax and set down the Costs of Suit upon all such Judgments, before such Judgments were entred of Record: Sithence which time Attorneys of this Court being also Clerks in the Prothonotaries Offices, have entred many of the said Judgments without the Warrant of any of the Prothonotaries or Judges, and have also entred great and excessive Costs upon the said Judgments at their pleasures, which were never rated or taxed by the said Prothonotaries, nor any Judge of this Court, to the great wrong of many of his Majesties Subjects, as hath appeared by many Complaints: For Reformation of which Abuses, *It is Ordered* this present Term of *Easter*, That no Clerk or Attorney of this Court, shall from henceforth enter of Record in this Court any of the said Judgments, or set down upon any of the said Judgments so entred any costs of Suit, before the same Costs be rated and allowed of by one of the Judges of this Court, or by the Prothonotary of this Court, in whose Office the same Judgement

of the Court of Common-Pleas. 75

Judgment shall be entred of Record,
and Warrant given by him under his
hand for the entring of the said Judge-
ment, upon pain to be imprisoned and
expulſed this Court for ever.

Bancus
communis


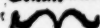
E. Coke.

P. Warburton.

H. Winch.

Augustine Nicholls.

Orders

Bancus
Communis.

Orders of Court.

P. Concerning the Prothonotaries Clerks
An 12 Ja- of this Court; their entring and
lobis. bringing in of Rolls; the forbidding
 them or the Attorneys of this Court
 the making and suing out Executions
 upon Judgments which are not signed
 by a Prothonotary of this Court; and
 the limiting a time to the Attorneys to
 give their Attendance at this Court.

*De Termino Pasche Anno Regni Domini
 Jacobi nunc Regis Anglie &c. duo-
 decimo.*

FOrasmuch as many Disorders have of
 late crept into this Court, by rea-
 son that the Prothonotaries of this Court
 do admit so many to be Clerks of their
 Offices as were never brought up in
 their Offices, and such as are ignorant
 of the Orders and Course of this Court,
 whereby great disorders do daily arise
 in this Court, and amongst others,
 the ill entring of Rolls, and the keep-
 ing

of the Court of Common-Pleas.

77

ing out of them so long that the Rolls cannot be bound up in such convenient time as they should and have been accustomed; and this proceedeth for that the Prothonotaries Clerks do carry their Rolls into the Country.

*Bancus
Communis*

1. For remedy whereof, *It is Ordered* this present Term of *Easter*, That if any Clerk of this Court shall presume to carry any Rolls of this Court into the Country, he shall for the first Offence forfeit to the Poor mans Box of this Court Forty shillings; and for the second be committed to the *Fleet*, and expelled this Court for ever.

2. *Item*, That every Clerk of this Court entring of any one Term half a File of Rolls and under, shall within fourteen dayes next after the end of every Term deliver into the Office whence he received such Rolls, all the said Rolls well and fairly entred, upon pain to forfeit to the Poor-mans Box of this Court for every one of the said Rolls not delivered as aforesaid for the first offence ten shillings, and for the second to be expelled this Court: And that every Clerk of this Court that entreth of any one Term above half a File of Rolls, and under a File, shall within one
and

*Bancus**Communis.*

and twenty dayes next after the end of every Term (*Easter* Term only excepted) deliver as aforesaid all his said Rolls well and fair entred, upon pain to forfeit as is last above said. And moreover, That every Clerk of this Court that entreth of any Term one File of Rolls and upwards, shall within thirty dayes next after the ending of every Term (*Easter* Term only excepted) deliver as aforesaid all his said Rolls well and fair entred, upon the like pain to forfeit to the Poor mans Box of this Court for every one of the said Rolls not delivered as aforesaid for the first offence Ten shillings, and for the second offence to be expelled this Court.

3. *Item,* That no Clerk or Attorney of this Court shall make or sue out of this Court any Writ of Execution upon any Judgment of this Court, except it be first signed with the hand of the Prothonotary of this Court in whose Office such Judgment shall be entred, upon pain to forfeit to the Poor mans Box for the first offence Twenty shillings, and for the second Offence to be committed to Prison, and to be expelled this Court for ever.

4. *Item,*

of the Court of Common-Pleas.

Ed

4. *Item*, That every Attorney of this Court shall give his Attendance at the Court by the second Return in every Term, saving only in *Michaelmas* Term, and in that Term by the third Return at the furthest, upon pain to forfeit to the Poor mans Box for the first offence Forty shillings, and for the second offence to be expulsed this Court, unless he shall have a just and reasonable excuse allowed of by this Court.

Henry Hobart.

Peter Warburton.

H. Winch.

Augustine Nicholls.

Orders

Orders of Court.

A declaration what Writs, Proces and Entryes are to be made by the Philazers of this Court only, and by no other.

De Termino Sancti Michaelis anno regni domini Jacobi nunc Regis Anglie &c. quarto decimo et Scocie quinquagesimo.

I*mprimis*, All manner of *Capias alias*, and *Plures*, and all other incident process before appearance of the defendant in all actions wherein process of outlawrie do lye, untill the Exigent awarded.

Item, All *Grand Cape's pone* and *Distringas* as well peremptory as infinite, and all other incident processe before appearance of the Tenant or Defendant, Writs of Seisin, and Writs to enquire of damages Issuing before appearance of the Tenant or defendant ; but all Judgements upon writs of
Enquiry

of the Court of Common-Pleas.

81

Enquiry of damages are to be entred with the Prothonotary only.

*Bancus
Communis*

Item, All writs of *Supersedeas* upon any *Capias* awarded out of their own offices and writs of *Rescous* upon the Sheriffs returne.

Item, The entring of all comparence upon Writs Issueing out; of their own Offices, the entring of Rolls to compell the Defendant to appear, their bayles upon appearance, and making the first *Scire facias* upon the said Bayle.

Item, View in dower or any other action where it lyeth, entring thereof, and writs of View thereupon.

Item, All writs of *Retorn. habend.* upon Nonsuite before appearance, Writs of second deliverance before appearance, Writs of *Capias* in *Withernam*, *Alias* and *plures* likewise before appearance, &c.

Henry Hobart,
Peter Warburton,
H. Winch.

Bancus
Communis.



Orders of Court.

CONCERNING the Enttring and delive-
ring of Record of the first *Capias*
upon originals, and the enttring Appea-
rances of Record with the Philazer by
the defendants Attorney, before he re-
ceive a declaration or offer to appear.

M.
An. 14 Ja-
cobi.

*De Termino Sancti Michaelis Anno Regni
domini Jacobi Anglie, &c. quarto de-
cimo et Scocie quinquagesimo.*

VVHereas by the dayly Com-
plaint made unto this Court
it doth plainly appear, that many *Capias*
Alias and *Plures* are sued out without
any Original to warrant the same,
whereby the King is deceived of his
Fines and seales, and the Plaintiffs loose
the benefit of their Suits, having most
commonly Judgments by default, *Non*
sum informatus, or confession; which
Judgements are reverfable for want of
the Original, and the defendants put
to unjust charges when no Original is
to

to warrant their arrest : For remedy of *Bancus*
 which abuses, forasmuch as other writs *Communis*
videlicet Exigents, *Habeas Corpora*, and
 the like, which are alwayes delivered of
 Record, are by that meanes freed from
 that abuse, *It is ordered*, That the first
Capias only upon every Original Issuing
 out of this Court shall be by the Phila-
 zers of this Court entred and delivered
 of Record, for which entry and delivery
 of Record the Philazer shall take the
 antient and usual Fee of four pence; And
 that no Attorneys upon payn to forfeit
 five pounds for the first offence, and ex-
 pulsion for the second, shall presume
 hereafter to Seale any such first *Capias*
 before the same be indorsed by the pro-
 per Philazer of the County out of which
 the writ is awarded, or his deputy
 thereunto appointed : And their all
 declaration in all suits shall be entred
 with the Prothonotarys of this Court
 only and by no other.

And Whereas all appearances for de-
 fendants upon writs of *Capias alias* and
Plures issuing out of this Court ought
 to be entred of Record, or otherwise
 they are not warranted by the Course
 of this Court, neither can the defendant

Bancus

Communis.



if he have been arrested plead thereupon *quod comperuit ad diem* in discharge of the Sherriffs bond taken for the appearance, upon which they are often sued, and the antient and usual Fee for entring all such appearances of Record being two shillings and four pence ; *It is ordered*, That every appearance upon every writ of *Capias alias* and *Plures* issuing out of this Court, shall be entred of Record by the proper Philazers only out of whose Office the said writ was issuing, and by none of the Prothonotaryes or other Officers of this Court ; And that no Attorneys upon payne to forfeit forty shillings to the Poor mens Box for the first offence, and expulsion of the Court for the second Offence, shall receive any declaration, or offer his appearance to any Clerk or Attorney of this Court upon any such mean proces before the Attorney for the defendant hath entred the appearance of the Defendant with the Philazer of the said County out of which the writ is awarded for taking of which appearance, & entring thereof upon Record, the Philazer shall take the Fee of sixteen pence and no more whereof he shall allow four pence to the Attorney which appeareth

of the Court of Common-Pleas. 85

peareth for the defendant, for bringing *Bancus*
a copy of such Writ from the She- *Communis.*
riff.

Henry Hobart,

Peter Warburton,

H. Winch,

Ff 3

Orders

Bancus
Communis.

Orders of Court.

Hill.
An 14 Ja-
cobi Regis.

AN Order made the 26th. day of January, in *Termino Sancti Hillarii Anno Jacobi Regis Anglie, &c. quarto decimo et Scocie quinquagesimo.*

Concerning Fines sued out by
Attorneys.

WHERCAS by an Order made *Secundo die Maij in Termino Pasche Anno Elizabethe Regine, &c. xliii.* concerning Writs of *Dedimus potestatem*, It was then Ordered, (*inter alia*) That because many Errors, faults and abuses, have been and daily are committed in suing out of Fines, by reason that many ignorant and unskilful persons, and such as were never brought up in this Court, nor belonging to the same, did take upon them to sue out fines; And that if any such abuses faults and Misdemeanors did happen touching the same through their Negligence or default

Reformation or punishment could be had they being persons unknown It was then Ordered that no fine should be received or Recorded in this Court unless the same be sued out by some of the Attornyes of this Court, or Clerk, or some of the Justices of Assize, and Subscribed with the name of such said Attorney or Clerk, to the intent that if any Misdemeanour be committed they may be called to answer it as by the said Order remaining in the Treasury at *Westminster* at Large appeareth: which said Order hath not been performed as it should or ought to have been, to the Loss and hinderance of the Attornyes of this Court and prejudice of the Kings Subjects; And for that the Clerk of the Warrants hath the custody of the Rolle of the Attornyes, and may best know who are Attornyes of this Court and who are not, And may give notice thereof to the Court if this Order be not hereafter duely observed (the want whereof heretofore hath made the said former Order frustrate) for the better Reformation therefore of Abuses, It is this day Ordered That from henceforth no fine upon any writt of Covenant shall be executed and sued out but by and in the name of an Attorney of Record of

Bancus

Communis.




Bancus
communis.



this Court, or of a Justices Clerk of his Fines: And the said Attorney or Justice's Clerk (or his man well known) shall bring the writ of Covenant immediately, after it shall be sealed to the Clerk of the warrants of this Court, or his Deputy, to be signed by him before it be returned Signed or Recorded by any other officer of this Court, To the intent that the said Clerk of the warrants or his Deputy may take and keep a note of the said writ of Covenant; with note shall be made in the forme following;
Berks. ff A. B. polo suo C. D. ad prosequend. breve de Con. versus E.F. de Maner. de Dale cum pertin. ac de ten. in Sale, &c.
 And because this Order tends to the retayning of the causes of the Court in the hands of the Attornyes of the same as is due, It is ordered, That the Attorney himself & Justice's Clerk shall allow for every such Entry *iii.d.* out of his fee or fees, and the Attorney or Justice's Clerk shall subscribe his name to the said note. And the said Clerke of the warrants or his deputy shall thereupon without delay Signe the said writ and keep the same Note, and Register it in a booke, that it may appear to the Court (if need require) what Attorney it was that sued out that fine; And that no Officer of
 this

of the Court of Common-Pleas. 89

this Court or his Deputy doe Receive or
signe any writ of Covenant, or make
Entry of any fine until it be signed by the
Clerk of the warrants of this Court or
his Deputy, upon payne that any Officer
Attorney and Clerk of this Court herein
offending, shall pay to the boxe for the
Poor for every Offence xx. s.

*Bancus
Communis.*


Henry Hobart :

Peter Warburton,

H. Winch,

Orders

Orders of Court.

ORDERS considered of by the Judges, concerning the Exaction and Excessive taking of Fees.

First, It is Ordered, That an exact Examination be had in every Court, and in every Office in that Court, what Fees were antiently taken and due for every thing done in that Court; and what hath been exacted by colour of erecting New Offices, or for *post diems*, or in respect of expedition, or upon any other pretence or colour whatsoever. The like to be done by the Justices of Assize for Fees belonging to the Clerk of the Assize or of the Peace, Sheriffs or other Officers whatsoever within their Circuits.

Then the true and antient Fees known to have them set down in Tables of every Court, and for every Circuit, and there to remain in such places as those Judges of those several Courts and Circuits shall assign and appoint.

And

And if any Officer, Attorney or Clerk shall offend in taking other Fees then shall be allowed of and set down in that Table, then the same Officer, Attorney or Clerk, for the first offence to make restitution of treble so much as he shall have taken of the party, and for the second offence to do the like, and to lose his Office and place, and to be excluded the Court for ever.

*Bancus
communis.*



That the number of Attorneys of each Court be viewed, and to have them drawn to a competent Number in each Court, and the superfluous Number to be removed, wherein respect to be had, that the most unfit and unskilfullest persons be removed.

That no Attorney shall suffer any other to use his Name, or practice in his Name, upon pain that the one and the other be both punished at the discretion of the Court, and to be excluded the Court for ever.

That no Bayl be offered to be put in by any Attorney for any party against whom no proces is sued, or Original brought, but the party being present, and the assent of the Court thereunto had.

That no Attorney nor Solicitor shall take any allowance of or for any Fee disbursed

*Bancus
Communis.*



disbursed by him to any Serjeant or Councillor in case where the General Issue is pleaded, or for procuring to have or make an answer without having a Ticket subscribed by the proper hand and Name of the said Serjeant or Councillor testifying what Fee he hath received, and for whom, upon pain to be seclused the Court, and from the practice of an Attorney or Solicitor for ever, And to make restitution to the party so much as he shall so take allowance of; and if any Counsellor at Law shall so affirm under his hand, that he hath received more then was delivered to him in truth, that then such Counsellor shall be seclused from any further practice in that Court where the cause is depending, at and by the discretion of that Court. And that no Attorney or Sollicitor shall take any allowance of or for any Fee disbursed by him to any Serjeant or Council in any other case then is before set down, but that he shall truly set down the Counsellors Name, what Fee he hath disbursed, and to whom, and take his Oath (if the party do require it) before some Judge in the Court where the Cause depended; That he truly disbursed the said summe to the same Serjeant or Counsellor, upon pain as is aforesaid. That

That if any Serjeant or Counsellor at *Bancus*
Law shall take any Fee to be of Council *Communis*
with any, and to be with him at any
time certain for any cause, and shall not
attend the same cause accordingly, that
then upon complaint made, or Informa-
tion thereof given to the Judges of that
Court where the Cause shall be depend-
ing, or any of them, the Judges by their
discretion shall give order for the repay-
ment and satisfaction thereof to the
Clyent.

That if any Serjeant or Counsellor at
Law shall be complained of to the Jud-
ges of any Court where the cause shall
be depending, that the same Serjeant or
Counsellor at Law have taken excessive
Fees of any for any matter depending in
that Court, that then upon proof thereof
the same Serjeant our Counsellor shall
at the discretion and appointment of the
same Judges make restitution of the ex-
cess thereof to the party, upon pain not
to be suffered to practice in the same
Court for such and so long time as the
Judges of the same Court shall think
fit, if the Court shall think fit to inflict
such punishment on them.

Orders of Court.


ORders made from henceforth to be observed in the Court of *Common-Pleas*, concerning pursuities of Informations exhibited upon any penal Statute.

WHereas heretofore many Writs of *Subpœna*, Labels and Tickets have been unduly made forth of this Court by the Clerks of this Court, no Information being filed in Court with any of the Prothonotaries, to the grievance of the Subjects of the Realm, and Slander of the proceedings of this Court, It is Ordered by the Justices of this Court this present *Michaelmas* Term, in the Twelfth year of his Majesties Reign, as followeth.

1. First that no proceſſe shall be awarded upon any Information exhibited in this Court, untill such time as the said Information be Orderly filed in one of the Prothonotaryes Offices of this Court, there to remaine upon the said file, and then the Writ of *Subpœna*,
and

and all other proccs to be Signed by the Prothonotary, all generall Issues to be marked upon the Information, and if any Clark doe make out any *Subpæna*, Labell or Ticket contrary to this Order That for the first fault he shall pay unto the Poor-mans Box xl. s. and for the second to be expulsed the Court, and the Informer that shall procure any *Subpæna*, Label or Ticket contrary to this Order by their owne meanes, or by any other not a Clark of the Court, the said Informer to be committed to the *Fleet*, and to make such fine with the King as shall seeme fit to the Court ; That no Informer presume to Compound for any penalty conteyned in any such Information, before the defendant have pleaded to the said Information or Confessed the same.

2. And to the Intent that a due moderation be had and kept concerning the fees due for the prosecution of any such Information, It is likewise Ordered, That the Prothonotaries of this Court shall take for the entring of any information, and signing of the *Subpæna*, only 2. s. and viii. d. and for the signing of any other proccs xvi. d- And likewise that the Clerk Ingrossing the said Information shall receive and take for his payns

*Bancus
Communit*


*Bancus
Communis.*



payns in that behalf only viii. d. and for the Copy of the said Information if it amount to the number of five leaves of paper and upwards, iii. s. iiiii. d ; if it be under the number of five Leaves then for every Lease eight pence, for the making of every *Capias pro fine* vi. d. for the seale of every *Subpœna* and *Capias pro fine*, the farmour of the Seale of this Court shall take only i. d ; for the seale of every other process vii. d.

3. And if it happen that any general Issue be pleaded to any Information after the Term wherein the same Information shall be exhibited, That then some known Clerk appointed by the Prothonotaryes for that purpose to enter the said general issues upon the Roll as aforesaid, and he to receive of the defendant for his paynes in that behalfe only viii. d.

4. Also that no Informer presume directly or indirectly to take any sum of money or other rewards of any defendant named in any such Information to neglect or foreflowe the due prosecution of the said Information, untill he have duely obtained from some of the Justices of this Court under his hand a
several

several Licence to Compound for every
several information so by him exhib-
ited.

*Bancus
Communis*


5. Likewise that after every such
Licence so had and obtained, and be-
fore any Composition made, the said In-
former shall with all convenient speed
bring the said Licence into the Protho-
notaryes Office where the Information
is filed, there to be Registered in a book
to be kept for that purpose, and the
Clerk to have *iiii. d.* for Registering
thereof.

6. Also that every Informer after a
Composition made for his part of the
penalty by vertue of any such Licence,
shall withall convenient speed make
true certificate to some one of the Jud-
ges of this Court upon his oath, of all
such summes of money as he hath re-
ceived or shall receive for his said Com-
position, which said Certificate together
with the said Licence shall be forthwith
sent unto the said Prothonotaryes Office,
there to be Registered in the aforesaid
book under Registry of the said Licence
to the Intent that the Justices of the said
Court being truly informed thereof,
may the better know how to rate and
proportion the Kings part.

Banc's

Communis.



7. And if no such Composition be made by vertue of any such Licence before the next Term following after the granting of the same, yet shall the Informer in the same next Term following certifie the same Licence as is abovesaid; and for default of such Certificate, then an Attachment to be awarded against the same Informer.

8. And to the intent his majesty may be the better answered and Satisfied of all such summes of money as shall accrew unto him by the said Informations, It is likewise Ordered, That if the defendant in the same Informations named after Composition made with the Informer as is abovesaid, do not voluntarily come in to answer unto the Kings majesty for his fine to be Taxed, and assessed by the Justices of this Court for his Majesties use, then a *Capias ad Satisfaciendum finem* shall be awarded against him to compel him thereunto; whereupon the fine being set and assessed, shall be presently paid in, and satisfaction being thereupon made and entred by the Prothonotary upon the Rolle of the said Information, shall be for ever a full

of the Court of Common-Pleas.

99

full and finall discharge of the said De- *Bancus*
fendant for the same Offence. *Communis*

Communis

9. Also that every Information shall be entred on the Rolls of the same Term wherein it is exhibited, and that every general Issue pleaded to any Information shall be entred upon the same Roll where the Information is Entred. whether the said Issue be pleaded unto the First Term, or at any time afterwards.

Henry Hobart.

Peter Warburton.

H. Winch.

Augustine Nicholls.

Orders of Court.

OR D E R S set down to be observed in
this Court, Touching pursuits upon
Penal Lawes.

1. **F**irst, That Special care be taken
that no Proces be suffered to be
sued forth upon any Information against
any penal and popular Statute, before
the Information exhibited, according to
the Statute of *Anno xviii.* of the late
Queen ; And that the said Information
be set on the file.

2. *Item*, That the Information once
set on the file, be not after taken
thence.

3. *Item*, That the very day of the
exhibiting the Information, be set on
the back-side of the Information ; And
that the Informer exhibit the same ac-
cording to the said Statute ; And that
the Informer's name, and the Statute
on

of the Court of Common-Pleas. 101

on which the Information is grounded, be indorsed on the back-side of the Process.

*Bancus
Communis.*


4. *Item*, That the Informer. pursue his Suit without any unnecessary delay, or any practice to defraud the due execution of the Statute upon which he Informeth: And if any do offend in any thing contrary to the Statute of xvij. or xxxj. of the late Queen Elizabeth concerning Informers, That in every such case the offender be punished according to the true meaning of these several Statutes.

5. *Item*, That no Licence to Compound upon any penal Statute shall be given, nor Composition made but in open Court, and both the Informer and Defendant to be present; And that not to be done but that the Informer shall set down upon his Oath what he will take; And that he hath not taken, nor will take any more.

6. *Item*, That at the end of every Term some honest and discreet Clerk for that purpose to be assigned by the Court, shall see and make Report to the Court what Informations or Suits

Bancus
Communis.



upon Penal Lawes be depending, and how they are prosecuted, and whether any default or fraud be in any Informer in prosecuting his Information, whereby the Court may take order for his punishment in that behalf according to the Law.

Edm. Anderson.

Peter Warburton.

Will. Daniel,

Orders

Orders of Court.


ORDERS concerning Informers,
and other Prosecutors upon Pe-
nal Lawes.

*De Termino Sancti Hillarii Anno vice-
simo Regni Jacobi Regis.*

H.
*An 20 Ja-
cob. Regis.*

WHEREAS it pleased the Kings Most
Excellent Majesty, by his Let-
ters Patents under the great Seal of
England bearing date the Fifteenth day
of *October*, in the Eighteenth year of his
Majesties Reign of *England*, to erect an
Office of Receiver and Collector of Fines
and Forfeitures due and to be due upon
Penal Laws, Excepting (amongst other
things) such as concern Badgers and
Drovers: And whereas also it pleased
his Majesty by other his Letters Patents
bearing date the Eighth day of *January*,
in the Twentieth year of his Majesties
Reign, to unite and annex unto the
aforesaid Office the Collection and Re-
ceipt of all such Fines and Forfeitures

*Bancus
& communis.*



as concern Badgers and Drovers formerly excepted, authorizing and requiring by the said several Letters Patents divers sundry things to be done and executed for his Majesties better Service as therein is at large expressed; It is Ordered, for the better accomplishment of his Majesties good pleasure specified in the said several Letters, as ensueth.

First, That every Informer or Prosecutor that shall hereafter exhibit or shew in this Court any Action, Suit, Bill, Plaint or Information, upon any Penal Law; shall within three dayes after the exhibiting thereof, deliver unto the said Receivers or Collectors, or their Deputies, at the publique Office kept by them for that purpose, a true Note containing briefly and exactly the effect of the said Information, Action, Suit, Bill, or Plaint, with the names and places of abode of the Defendants, and the quality of their Offence, to the intent the same may be registred according to the true intent of the said Letters Patents; or else shall make known at the said Office the place of the said Defendants abode, and leave at the said Office a true Copy of the said Information

tion or Plaint, to the intent the said Receivers or their Deputies may thereout take such Notes to be Registred as they shall think fit.

*Bancus
Communis.*

Item, The said Informers and other Prosecutors shall deliver into the said Office unto the said Collectors or their Deputy or Deputies, a true and brief Note of every Verdict, Judgment or Execution that shall be given or awarded in the said Informations, Actions and Suits; And that within three days after such Verdict Judgment or Execution so given or awarded respectively.

Item, That every such Informer or other Prosecutor shall within the like space of three dayes as aforesaid, after any Licence given for the making of any Composition or any Fine stricken or assessed for his Majesty, or any composition made, enter the same in this Court, and also deliver a brief and perfect Note under his or their hands, expressing truly what Licence, Fine or Composition hath passed therein, unto the said Collectors and their Deputy or Deputies at the Office aforesaid.

Item, That every Informer or other Prosecutor that hath heretofore since
his

Rules and Orders

*Præcis
Communis.*



his Majesties last General Pardon, made any Composition which is not recorded or entred in this Court, shall before the end of *Easter* now next ensuing certifie and enter the same truly and justly in this Court upon the said Informers own oath, and also deliver a brief and perfect Note thereof to the said Collectors or their Deputies in the said Office.

Item, That every Informer or Prosecutor shall prosecute with effect, without compounding, unless they be Licenced by the Court to compound, and the Licence entred in this Court, and a brief Note of the same delivered to his Majesties Officers as aforesaid; And that all Clerks and Officers be careful to perform their duties for levying his Majesties parts and duties; otherwise upon complaint to be made by the said Collectors, or Receivers or their Deputies, condign punishment shall be inflicted on these Offendors for their Offence or Neglect.

Lastly, That the said Collectors and their Deputies, such as shall be allowed by this Court, shall be admitted to have free access unto any Office in this Court, there in the presence of the Principal Clerk of the same Office, or some other
by

by him to be appointed for that purpose to view and see, search and examine all and every the Records, Rolls, Proses, Files and Extreates in the same, or in the custody of any of the Officers belonging to the same, which may tend for the discovery and better finding out of any frauds or concealments of the Nature aforesaid concerning any Information, Licence, Composition or Judgment, upon any Penal Law or Statute ; And also to take Notes or copies of all such Informations, Bills, Complaints, Suits, Verdicts, Judgments, Executions, Licences and compositions upon the same, as well for the time past as the time to come, as they the said Receivers or their Deputy or Deputies for that purpose appointed shall think fit, without paying any Fee for the same. And that all Officers and Clerks of this Court shall yield them their reasonable furtherance and assistance herein.

*Bancus
Communis.*



*Henry Hobart,
H. Winch,
Edward Hutton,
William Jones.*

Bench
Commonis.



Orders of Court.

DE Termino Sancti Hillarii Anno Regni Domini Caroli Dei gratia Anglie, Scotie, Francie & Hibernie Regis fidei defensoris, &c. secundo.

Concerning Outlaries, and Writs of Trespass, *Quare clausum fregit*.

Orders made this present Term of Saint Hilary, by the Lord Chief Justice and the other Justices of the Court of Common-Pleas at Westminster, for the Reformation of divers Abuses as well concerning Outlaries, as Misdemeanors of Sheriffs in the Execution of Process thereupon, to the great delay and damage of Creditors in their Suits, as also by the late suing forth of Writs of Trespass, *Quare clausum fregit*, where the cause of Action is Debt, contrary to Law and the ancient Practice of this Court : And that the said Abuses may be suppressed, and the Proceedings of this Court settled and established for the due

due Administration of Justice both to *Bancus*
 the Plaintiff and Defendant according *Communis.*
 to the Rule of Law, and the usage of
 the same Court, *It is Ordered*, That no
 Attorney or Clerk of this Court here-
 after shall sue forth a Writ of Trespass
vi et armis, where the true cause of Acti-
 on is debt, upon pain to forfeit for the
 first offence Twenty shillings; and for
 the second offence to be put out of the
 Roll. And that no Attorney or Clerk
 by consent or composition shall take a
 declaration in Debt, his Clyent being ar-
 rested upon an Action of Trespass *vi et*
armis; or shall take a Declaration for any
 greater debt then for which the Defen-
 dant was arrested; but the Defendant
 to have Costs of Suit in such cases for his
 unjust vexation, according to Law and
 the antient Practice of this Court.

It is also *Ordered*, That upon every
 Reversal of any Outlary or Writs of
 Error brought for Reversal of any Out-
 lary before Judgment, except in the
 cases hereafter following, the party that
 shall so Reverse the Outlary, or bring a
 Writ of Error for reversing such Out-
 lary, shall by himself or his Attorney
 appear to a new Original, and put in
 Bail to the Plaiutiffs Suit, if the debt or
 damages demanded by such Original
 be

Bancus

Communis.



be Twenty pounds or above, in such manner and form as is used in all cases when an Outlary is reversed, or a Writ of Error for want or for insufficiency of the Writ, or return of the Proclamation, according to the Statute made in the One and thirtieth year of Queen *Elizabeth*; unless the Plaintiff himself or his Attorney give consent thereunto, or that the Court be satisfied by sufficient testimony upon Oath or otherwise, that the matter is agreed. But in case where the Defendant is arrested upon a *Capias Utlagatum* in some remote Countrey one hundred miles distant from *London*, from whence they cannot speedily send Bail, *It is ordered*, That the Attorney that followeth the Cause for such Defendant, shall leave with the Officer where the Writ of Error is allowed, or Outlary is reversed, a Warrant or Note in writing subscribed under the hand of his Clyent and himself, *That his Clyent at or before return of the Writ of Capias Utlegatum whereupon he was arrested, will appear and put in Bail as aforesaid to a new Original to be purchased within two Terms following*; for which Bails in the cases aforesaid shall be taken no more then two shillings four pence; (being the antient Fee that is taken for

Bails

of the Court of Common-Pleas.

III

Bails upon the Proclamation) And in all cases where the debt and damages sued for in the Original shall be under Twenty pounds, then the said Attorney to leave a Warrant or Note in writing subscribed as aforesaid, *That the Defendant Outlawed upon return of the said Writ of Capias Utlegatum, shall and will appear to the Plaintiffs Suit, as aforesaid.*

Bancus
communis



And it is further Ordered, That all Reversals hereafter made shall be entred upon the same Roll where the Exigent is awarded, being the most proper and fittest place for the safety and quiet of all persons outlawed, and their Executors to find the said Reversal in future times, and not upon other Terms and Rolls as is now used.

For prevention of the great and common Abuses daily committed by Sheriffs and Bayliffs, by enlarging persons arrested upon Writs of *Capias Utlegatum* before Judgment, without any *Superseas* at all, whereby the Creditors are oftentimes deprived of their due debts with loss of their charges of Suit, It is Ordered, That if any Sheriff or other Officer whatsoever after the end of this *Hillary Term* shall set at liberty any person arrested upon a *Capias Utlegatum*

Bancus
Communis.



tum before Judgment, without a lawful *Supersedeas* in that behalf, that upon Affidavit thereof legally made, the party grieved shall have an Attachment against such Sheriff or Officer so offending; and upon examination thereof the party so offending, to undergo such punishment by Fine, Imprisonment, or otherwise as by the Court shall be thought fit; And the party may also take his remedy by Action of the Case upon the Escape, according to Law, wherein he shall have the Assistance of the Court.

Thc. Richardson.

Richard Hutton.

Harvey.

George Croke.

Orders



Orders of Court.

That the Offices of Entering-Clerk, and Attorney, shall be distinct, and not promiscuously used by one person.

De Termino Sancti Hillarii Anno Regni Domini Caroli nunc Regis Anglie octavo.

H.
An. 8 Car.
Regis.

WHereas it appeareth, that many ignorant persons not bred up in this Court, nor in any Inne of Court or Chancery, have been admitted to be Attorneys of this Court, to the great discouragement of many good and sufficient Attorneys in the same; and many Attorneys contrary to the Antient usage of this Court, permitted to draw and enter their own causes in the Prothonotaries Offices, by reason whereof many gross Errors are daily committed, this Court ill served, the Kings Subjects prejudiced in their Suits, and many sufficient Clerks wholly attending the Prothonotaries Offices greatly discour-

H h

ged

Bancus

Communis.



ged and decayed: And whereas it is evident by the antient usage and many former Orders of this Court, That the business of Clerks in the Prothonotaries Offices, and the practice of Attorneys, have been and ought to be distinct Employments; And for that it will be of Ornament and great use to this Court, to be attended with skilful Clerks able to do the service of it, And the learning of the Law is much seen in the exact Forms of good pleading, Therefore to encourage Clerk of Prothonotaries Offices to go on in their Profession; And for remedy of present, and prevention of future Evils, It is this present *Hilary* Term by the Justices of this Court, Ordered as followeth:

First, All Clerks of Prothonotaries Offices, and Attorneys of this Court, who have heretofore promiscuously exercised the distinct professions of Clerk and Attorney before the last day of *Easter* Term next coming, shall make election and declare unto the Prothonotary of whose Office they are, whether of the said Professions they intend to follow, And shall for ever waive the other, except in some particulars here, after mentioned.

Item,

of the Court of Common-Pleas.

115

*Bancus
Communis*


Item, According to the auncient usage and divers Orders of this Court, no Attorney shall from henceforth enter or Exemplifie any Common Recovery, or draw, copy, or enter, any declaration, Plea, Issue, demurrer or other cause Issuing out of the Prothonotaryes Offices, but shall make choice of some Clerk of that Prothonotaryes Office wherein himself entresth to do the same, upon pain of suspension from his practice for the space of two Terms, and further punishment at the discretion of this Court for the first offence, and for the second Offence, to be expelled the Court for ever Provided, that such Attorney as for the space of ten years last past at the least have entred their owne Causes, whose Names shall be written in a Table signed by the Prothonotaryes of this Court before the end of *Easter Term* next, shall notwithstanding be hereby permitted during their lives to enter such causes as are drawn by themselves, and wherein they are Attorneys.

Item, None hereafter shall be admitted to be an Attorney of this Court, unless he have served a Clerk or Attorney of this Court by the space of six years at the least, or such as for their education and study in the Law shall be approved

*Bancus**Communis*

of by the Justices of this Court to be of good sufficiency and every of them admitted of one of the Inns of Court or Chancery.

Item, No Clerk of a Prothonotaries office shall hereafter prosecute and defend as an Attorney of this Court any personal action whatsoever upon pain to be suspended and punished as aforesaid.

Item, None shall from henceforth be admitted a Clerk of a Prothonotaries office, but such only as have served a Prothonotary or Clerk in a Prothonotary's office for the space of Six years at least, and to be approved to be of good sufficiency and behaviour, and likewise be admitted of one of the Inns of Court or Chancery.

Item, No clerk of a Prothonotaries office shall hereafter prosecute and defend as an Attorney of this Court any personall action whatsoever upon pain to be suspended and punished as aforesaid.

Item, None shall from henceforth be admitted a Clerk of a Prothonotaries office,

office, but such only as have served a Clerk in a Prothonotaries office for the space of six years at least, and be approved to be of good sufficiency and behaviour, and likewise be admitted of one of the Inns of Court or Chancery.

*Bancus
Communis.*



Item, The Names of all such as are to be allowed Clerks of Prothonotaries offices, and to have access to the Records of this Court, shall before the end of *Easter* Term next be fairly written in a Table : and subscribed by the Prothonotaries of this Court ; which Table shall remain in the Treasury of the same Court ; and that such Clerks for dispatch of their business and writing of precedents for increase of their knowledge, shall have access to the Records of this Court without paying any fee for the same.

Item the Prothonotaries of this Court shall not from henceforth deliver any Plea Roll or Common Roll to any whose names shall not be registred in the said Table.

Item, No Attorney of this Court already admitted shall from henceforth remove or cause to be entred any of his

BANCUS*& communis*

Causes out of the Prothonotaries Office wherein he is now settled and his Causes entred; And that such Attorneys whose Causes are now entred in more Offices then one, shall be restrained to enter in one Office only, And also that every Attorney hereafter to be admitted, shall from henceforth cause to be entred all his causes in that office where he first settleth and no other, unless it be by the leave and assent of all the Justices of this Court first had and obtained under all their hands upon reasonable cause to them shewed, upon payne of being expelled the Court for ever; And no Prothonotary Clerks shall remove from the Office wherein he first settleth, without the like leave, under the payne aforesaid.

Item, The Attornyes of this Court shall from henceforth duely enter their appearance upon all Original Writs, Writs of *Capias*, and all other Writs returnable in this Court wherein the Defendants appearance ought to be entred, and shall likewise duely put in writs of *Superfedeas* to such Exigents as they appear unto, according to the ancient usage of this Court, and sundry former Orders made in this behalf under pain

of the Court of Common-Pleas. 119

shall be expelled the Court for ever. *Bancus.*
Commissis.

Item, The Attorneys of this Court shall from henceforth duely repaire unto the Prothonotaries Office, there to demand and take copyes of declarations, Issues and other Pleadings; and that no Clerk of the said Offices shall be compelled to deliver any declaration or other copy, or to shew any deed or writing in *Curia prolat*, Elsewhere then in the said Office, and if any Attorney shall refuse to take or pay for his said copyes, then upon Complaint and prooffe thereof made to this Court, to pay forth-with to the Clerk double his Fees, or else to be put out of the Roll of Attorneys and not to be re-admitted without Fine at the discretion of the Justices of this Court, paying also the sayd double Fees according to an Order of *Michaelmas Sexto* and *septimo Regine Elizabethæ*.

Item, The Clerks in every Prothonotaries office according to the auncient usuage of this Court, shall from henceforth duly attend the said Office during the Term.

Rules and Orders

Bancus
Communis.




Item, No Officer, Clerk, Attorney or Attorneys Clerk of this Court, shall contrary to a formet Order made in *anno quinto decimo Regine Elizabethæ*, hereafter sue forth or procure by any means directly or indirectly any *Latitat* or *Quo minus*, or shall prosecute and follow for the Plaintiff any action, bill or suite upon any such proces of *Latitat* or *Quo minus*, upon pain for the first offence to be suspended and punished as aforesaid; And for the second to be expelled the Court.

Item, No Prothonotaries Clerks shall from henceforth demand or receive any more then their due and ancient Fees; And forasmuch as the said Clerks as well for the skill and knowledge requisite to their profession, as for their great care and pains taken in their calling, do deserve their due and ancient Fees allowed by the Court, If therefore any Attorney of this Court shall from henceforth endeavour to draw or procure any Clerk to draw or enter his causes for less or other then the said due and allowed Fees, to the damage and discouragement of experienced Clerks, that then such Attorney so offending upon complaint and proof made thereof to this Court, shall be expelled this Court
for

of the Court of Common-Pleas. 121

for ever. And if any Clerk shall be found to offend therein, then the Clerk so offending to be utterly disabled and expelled the Court for ever.

Bancus
Communis.


Lastly, Every Attorney of this Court shall from henceforth every Term duly pay unto the Prothonotary in whose Office he entreth, for all his entries of the same Term, And if such Attorneys do not pay for his said entries the same Term or before the end of the next Term after such entry made, then such Attorney upon Complaint to the Court of such default shall be put out of the Roll of Attorneys according to the said Order of *Michaelmas sexto et septimo Regine Elizabethæ.*

Ro. Heath,
Ri. Hutton,
Geo. Vernon.
Fr. Crawley.

Orders

Bancus
Communis.



Orders of Court.

Trin. 22 Caroli Regis.

T.

An. 22 Car.

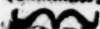
Concerning the filing of Writs of Covenant, Writs of Entry, Warrants of Attorney, and other Writs relating to Fines and Common Recoveries.

Whereas this Court is Informed, that divers Writs of Covenant, and other Writs whereupon Fines be levied, and Writs of *Dedimus Potestatem* for acknowledging of Fines, and divers Writs of Entry, Summons and Seisin, and Warrants of Attorney, whereupon Common Recoveries be suffered, have been of late times lost and kept unfiled; And whereas it hath now and this last Term appeared to this Court, that great damage hath accrewed and still is likely to accrew to several persons by the Misprisions and Neglects of Attorneys, Clerks and Officers herein; And whereas by the Statute made xxij. Elizabeth, for

for avoiding of Errors and such Mischiefs, provision is made, that the same Writs and other proceedings thereupon may be enrolled, and that the Inrollment thereof shall be as good, sure and valid in the Law, as the same being extant were or ought by Law to be; and by the same Statute it is also Enacted, That the Justices of this Court for the time being (other then the Chief Justice) should take Order in all needful and convenient matters for the said Inrollments, giving them power also to examine and punish by Fine and Amerciaments any Clerks, Sheriffs Deputy, Attorney or other person for his or their Misprision, Contempt and Negligence touching the premisses: Therefore this Court doth declare and direct, That all Attorneys, Clerks, Sheriffs, Deputies and Officers be from henceforth more careful to file their Writs of Covenant, Entry, Summons and Seisins, and other the Writs in the Statute mentioned, and to make due Returns thereof, and to do all other things pertaining to their several Offices which the Law requires to be by them performed touching the said Fines and Recoveries, upon pain of such Fines and Amerciaments as the Court may

*Bancus
Communis.*


affess

Bancus
Communis.


assess upon them by the said Statute, which this Court declares they will from time to time put in full execution according to the said Act of Parliament, for the punishment and prevention of the great Mischiefs which shall or may happen by such Mispri-
 fions, Neglects and Contempts as afore-
 said.

Edw. Reve,

Peter Pbesant,

Orders

Divers Reasons which

His Majesties Justices of his Court of Common-Pleas do most humbly offer to His Sacred Majestie, against the Patent intended to be granted to W. M. J. M. G. M. and W. W. for the erecting of a New Office for the stamping of all Originals during their several Lives.

THis Patent is grounded upon untrue Surmises made to His Most Excellent Majestie, and the thing intended thereby to be done, altogether unnecessarily for the pretended inconveniencies purposed thereby to be remedied, are better provided for by Orders in Court already made; and for that and divers other causes void and against the Law.

The Fee of *iiij. d.* thereby given to the intended Patentees, was heretofore appointed by Order made by the then Justices of the *Common-Pleas*, upon great advice and consideration to the Phillizer an ancient Officer of the Court, who be-
fore

*Bancus
Communis.*



fore the making of that Order had for entring of an Apparance 2 s. 4. d. and by that Order was abated and ordered onely to have 16 d. for entring of an Apparance, and 4 d. for entring of the first *Capias*, and delivering thereof of Record ; which 4 d. is the same that is now given to this new intended Officer, the said Order was so made, and the said Fee of 4 d. thereby given to the Phillizer before any of the now Justices were Justices of the said Court, neither hath any one of them any particular benefit by the said Fee of 4 d.

Whereas the Fee of 4 d. was appointed to the Phillizer only for entring and delivering of Record of the first *Capias*, which was only in such particular cases where *Capias* doth lye ; this Patent doth now erect this new Office, and doth not only translate this Fee of 4 d. from the Phillizer, but doth give a new Fee of 4 d. to the now intended Officers for stamping of all manner of Original Writs whatsoever, whereby they shall not only have the Fee of 4 d. which is due to the Phillizer, but also have the Fee of 4 d. for many Thousands of Original Writs whereby no *Capias* doth lye, which is a new Charge imposed upon the Subject that never was

of the Court of Common-Pleas. 127

was before, and for which the Subject hath no benefit.

Bancus
Committit

This new Office intended to be erected by the said new Patent, and the said Fee of *iiij. d.* thereby appointed to be paid, tends mainly to the derogation of his Majesties Court of *Common-Pleas*, and to the decay thereof, it being as antient as any other Court of Justice for assurance of Lands, and tryal of all manner of Actions.

This new intended Office will be a stay of Common Assurances in respect of Writs of Covenants for Fines, and Writs of Entry for Recoveries, and therein and in many other cases besides the new Fee, will cause a great delay of Justice.

The stamping of all Original Writs intended by this Patent cannot be performed; for before the sealing of the Writ, it will be to no purpose to prevent the pretended abuses; and after the sealing thereof, this new intended Officer neither can nor may break it open until it hath been delivered to the Sheriff, and by him broken up and executed and returned; and if it might be done, yet it will be so great a loss of time, and such a hindrance to Plaintiffs in their Suits, to be made stay so long
for

Bancus

Communis.



for the *Capias* and other mean proces, as they will be inforced to go to other Courts where your Majestie hath either no Fine at all upon Suit, or but half so much as is paid in the Common-Pleas; And therein your Majestie will sustain much loss, whatever is pretended to the contrary.

And we conceive this Patent will take away the Freehold of the Philizers, and to be against the Statute of Grace made the 21 year of his late Majesty, against Monopolies.

It pleased King *James* of most happy and blessed Memory your Majesty's most Royal Father, whose Acts your Majesty hath been ever most graciously pleased to approve and follow, by his Privy Seal dated 25 No. Anno 14 of his Raign, to give his Royal Word and Promise, That no Office should hereafter be erected in the said Court of Common Pleas, to the detriment of the said Court: And also by a Patent under the Great Seal of *England* dated 25 Oct. 18 of his Raign, directed to the Lord Keeper of the Great Seal of *England*, and the Judges of both Courts at *Westminster*: As also by divers other Privy Seals, did amongst other things command the Judges of the said Court, That no passage

ſage ſhould be given to any Suits for *Bancus*
erection of new Offices or Fees to the *Communis;*
prejudice of the Officers of the ſaid Court, until the nature of them be well
weighed and conſidered by the Keeper
and Judges of the ſaid Court.

Laſtly, the Fee of *iiij. d.* ſo tranſpoſed
and appointed by the ſaid Juſtices to
the Phillizers, was either lawful or an
unlawful Fee; if it be lawful, then it
belongeth to the Phillizers as part of their
Freehold, and therefore not to be taken
from them: if it be unlawful, then it is
to be diſcharged or ſuppreſſed, and can-
not lawfully be given to any other.

Bancus
Communis.

Orders of Court.

*De Termino Sanctæ Trinitat. Anno
Domini, 1649.*

WHereas all Writs Original return-
able in this Court, ought by the
Law, and by the Course of the Court
to be brought to the respective Phila-
zers of the County where the Action
is laid, to be by them Recorded: And
whereas the *Capias Alias & Plures*, and
all other Mesn Proces thereupon, un-
till the Exigent ought to be made by
the said respective Philazers according
to their Oaths and duty of their places,
Yet divers Attorneys and others con-
trary to the Law and Course of the
Court, do make the said *Capias* and
other Proces, and procure them to be
sealed without coming to the Philazer
for the same, and do upon such *Capias*
cause the people to be arrested and kept
in Prison, and often to be outlawed, no
Original being sued out or returned,
contrary to the Law, to the intolerable
vexation and wrong of the people in
their Bodies and Estates, which Writs
so

of the Court of Common-Pleas. 131

So unduly made ought not to be sealed by the Clerks of the Seal of this Court: For the better prevention of the said abuse, And that the Clerks of the Seal-Office may have sufficient knowledg of such Writs, the Respective Philizers of the Court are hereby enjoyned, And it is Ordered by the Court, That the said Writs issuing out of the Philizers Office be stamped by the Respective Philizers, so as the Clerks of the Seal-Office may know it hath passed the Philizer.

And it is further Ordered, That the Clerks of the Seal-Office shall not Seal any of the said Writs, whereupon there shall not be the Philizers Stamp as afore-said. And the Attorneys and others whom it may concern are to take notice, that the Court will duly put the Law in Execution against such as shall offend in the premisses. And the Philizers likewise are hereby to take notice, That the Court doth expect they should procure the Original to be duly sued forth and filed according to their Oaths and Duty of their places; And that the Court will severely punish their neglect herein.

*Oliver St. John.
Peter Pbesant.*

Bancus
Communis.




Orders of Court.

M. **D**E Termino Sancti Michaelis Anno
An. Dom. domini. 1649.
1649.

Concerning the entring and bringing
in of the Rolls of this Court.

WHEREAS by the ancient
course and usage of this Court,
noe Attorney or Prothonotaries Clerk
of this Court ought to carry the Rolls
of this Court into the Country, but
ought duely and fairly to Enter and
then to bring in and docquet their said
Rolls in the respective Prothonotaries
Offices of this Court from whence they
received the same, in such convenient
time as the same might be examined
by the said Prothonotaries, and also be
bound up by the Clerk of the Essoins
of this Court for the time being, by the
Essoine day of every Subsequent Term
Easter only excepted. And whereas up-
on the breach and neglect of this anti-
ent and Landable Course and usage, and
for

of the Court of Common-Pleas. 133

for prevention of the Mischiefs growing *Bancus*
and happeniug thereupon, the Justices of *communis.*
this Court in *Pasche duodecimo Jacobi* 
made a good Order upon several penal-
ties therein expresse, which Neverthe-
less hath not taken that good effect as
was intended, by reason (as it is con-
ceived) the times thereby limited for
Enteing and bringing in the said Rolls
was too Short, And whereas it dayly ap-
peareth, that many Attornyes and Pro-
thonotaryes Clerks of this Court have
of late used again to carry their Rolls
into the Country, And also delayed to
bring in their Rolls into the Prothono-
taryes Offices untill Essoine Eve of the
subsequent Term, some others not un-
till the next Terme, and others do not
bring them in at all, whereby many
times Executions have been executed
and no Judgments were to be found up-
on Record and oftentimes Motions made
in Arrest of Judgement, and no issue
Rolle could be had or found when the
Court required the same, which is con-
trary to the said ancient course of this
Court and contrary also to the said for-
mer Order of this Court in that behalfe
made, It is therefore this present *Micha-*
elmas Term declared and ordered by the
Justices of this Court, That from hence-
forth

Bancus

Communis

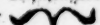


forth no Attorney or Prothonotaries Clerk of this Court shall carry any Rolls of this Court into the Country, upon payne to be put out of the Rolle of Attornyes of this Court, and out of the Prothonotaries Office for the first Offence; and for the second offence to be committed to the Fleet and expelled this Court.

Item, That every Prothonotaries Clerk, and every Attorney of this Court that shall in any one Term enter five Rolls or under, Shall within fourteen days after the end of every Term (*Easter Term* only excepted) And that every Prothonotaries Clerk, and every Attorney that shall in any Term enter above five Rolls, and to the Number of halfe a file of Rolls, shall within twenty four dayes next after the end of every Term (*Easter Term* only excepted) deliver in a docquet of all such Rolls as they shall receive from the Prothonotary well and fairly entred into such Office from whence they received such Rolls; And that every Prothonotaries Clerk, and every Attorney of this Court that entreth in any one Term above half a file of Rolls, and under a file of Rolls, shall within thirty four dayes after the end of every Term (*Easter Term* on-

of the Court of Common-Pleas. 135

*Bancus
Commissis.*



ly excepted;) And that every Prothonotaryes Clerk, and every Attorney that entred in any one Term one file of Rolls, and upwards, shall within forty four dayes next after the end of every Term, (*Easter Term* only excepted) deliver in and docquet all his Rolls well and fairly entred, upon payne to be put out of the Prothonotaryes Office, and out of the Roll of Attorneyes of this Court for the first offence, and for the second to be comitted to the *Fleet*, and expelled the Court. And it is further ordered, That the Clerk of Essoynes of this Court for the time being shall have liberty to peruse the several books and papers of the Prothonotaryes of this Court by them used for the delivering out of their Rolls to their several Clerks and Attorneyes of their several Offices, thereby to take notice what Rolls were by them delivered out and be not brought in within the times above Limited; And the second day of every Term the Clerk of the Essoynes of this Court, shall deliver to the Justices of this Court, in open Court, a note in writing of the Names of such Clerkes and Attorneyes as he shall find faulty herein, and of their several Offences against this Order; And for his en-

*Bancus**Communis.*

couragement in so Needfull a Service
 It is Ordered, That every offender
 herein as often as he shall offend shall
 pay to the Clerk of the *Essoynes* ten
 shillings for every Rolle from time
 to time so left out and wanting as
 aforesaid, and that in consideration
 thereof all penaltyes heretofore Order-
 ed to the Clerk of the *Essoynes* for
 keeping out of the *Prothonotaryes* Rolls
 to Cease, And for the Rolles of every
Easter Term the same shall be brought
 in and doggetted by the severall Clerks,
 and Attornyes of this Court in the
 respective *Prothonotaryes* Offices of this
 Court from whence the same Rolle
 were delivered out upon or before the
 first day of *Trinity* Terme next fol-
 lowing as heretofore hath been used,
 upon the like penalties (of putting out
 of the Rolle and office; and of Com-
 mitments and expulsion as aforesaid
 And it is further Ordered, That the
 Clerk of *Essoynes* of this Court shall
 not deliver any of the Rolles which
 he hath received back from the *Protho-*
notaryes to any Clark or Attorney
 of this Court, or to any other per-
 son; But shall duely binde up the
 same Rolles; And that he shall not
 deliver any cleane Rolles for the *Pro-*
thonotaryes

of the Court of Common-Pleas. 137

thonotary's Offices but to the Prothono-
taries themselves, or to such of their
Clerkes as they shall send for the same
upon pain to pay to the poor mans box
of this Court twenty shillings for every
Roll which he shall so deliver contrary
to this Order.

*Bancus
Communis.*



Ol. St. John.

John Puleston.

Peter Warburton.

Edward Atkins.


Orders

Bancus
Communis.*Orders of Court.*M.
An. Dom.
1649.**D**E Termino Sancti Michaelis Anno
Domini, 1649.

*Concerning the taking of Bayl upon Causes
removed out of Inferiour Courts; and
the entring of Caveats for good Bayl
with the Justices of this Court.*

WHEREAS many Inconveniencies and
Mischiefs do happen unto the
Plaintiffs in Causes removed out of In-
feriour Courts into this Court, by reason
of the not filing of Bayls taken in such
cases in due time, and sometimes not-
withstanding the great care and dili-
gence of the Justices of this Court used
for the taking of good Bayle, the Bayl
doth prove insufficient, which happen-
eth by reason that the Plaintiffs nor
their Attorneys do not enter their Ca-
veats for good Bayl with the Justices of
this Court according to the antient
course in that case heretofore used: For
Remedy whereof, It is Ordered this pre-
sent *Michaelmas* Term, That the Plain-
tiffs or their Attorneys in such Causes
here,

hereafter to be removed, do duly enter their Caveats for good Bayl with all the Justices of this Court according to the antient Course; And that the Attorney for the Defendant which shall remove any such Cause, shall give notice unto the Plaintiff or his Attorney in the Inferiour Court, of the same time when the Bayl shall be put in, and of the names of the said Bayl, and where they live, and shall make Affidavit of such notice: And if the Plaintiff or his Attorney after such notice will not attend to take exception to the Bayl at the time of the taking thereof, nor within fourteen dayes after, that then the said Bayl shall be forthwith filed by the Attorney that sueth forth the Writ, upon pain to be put out of the Roll of Attorneys of this Court; And if the Plaintiff or his Attorney shall within fourteen dayes take exception to the Bayl, then such Plaintiff or his Attorney that takes exception, shall give notice thereof unto the Defendant or to his Attorney, and make Affidavit of such notice within the fourteen days after the Bayl taken. And for that many times prisoners are committed to the Fleet upon Habeas Corpus, and the Commitments are not filed with
the

*Bancus
Communis.*


*Bancus
communis.*



the Prothonotary, and so not recorded, whereby many times Prisoners escape, and no Action lyes against the Warden of the Fleet for the same, It is therefore Ordered, That the Attorney that sues forth the *Habeas Corpus* for such Commitments shall duly file the same in the Prothonotaries Office, that it may be Recorded as it ought to be, upon pain to be put out of the Roll as aforesaid; And that every Writ whereupon any Bayl is taken in Court shall be made retornable at a day certain, and the bayl thereupon shall be put in upon the Retorn of the Writ, and not before nor afterwards.

Oliver St. John.

Peter Warburton.

John Puleston.

Edw. Atkins.

Orders

Orders of Court.

DE Termino Sancti Hillarii Anno decimo tertio & decimo quarto Caroli Secundi Regis.

H.
An. 13 &
14 Car. 2.

Concerning Bayles.

THat Writs of Habeas Corpus directed to the Inferiour Courts of London and Westminster, Southwark, and other Courts within five miles of London, may be retornable immediate: And if the Defendant intendeth to be bayled, then upon or within four dayes after allowance of the Writ, the day of which allowance being indorsed by such Officer as allowes the same, on the back of the said Writ, notice is to be given in writing of the names and Addition of the Bayl, the time when, and the Judge before whom the same is intended to be put in, to the Plaintiff or his Attorney, or him that causeth the plaint to be Entred; or if none can be found, then notice of the premisses

*Bancus
Communis.*



premisses to be left in writing with the chief Clerk of the Inferiour Court or his Deputy, by the party that tenders the Bayl, or his Attorney, and Oath made thereof, otherwise the Bayl not to be taken; And a *Procedendo* granted if desired before Bayl accepted.

That if no Bayl in such case be put in within eight dayes after the *Habeas Corpus* allowed in those Courts when it is returnable *immediatè*, a *Procedendo* may be granted by any Judge of this Court if desired before Bayl taken.

And if Bayl be taken in the absence of the Plaintiff or his Attorney, the same is to be taken *de bene esse*; and if Exception be taken within Twenty dayes after the Bayl taken, notice having been given as aforesaid, then the Bayl delivered out to be filed.

That if Bayl upon a *Habeas Corpus* be taken before a Judge at his Chamber, and not disassented unto, if not filed within four days after the Twenty days, a *Procedendo* may be granted upon Certificate that it is not filed.

That in Term time the Plaintiff in the Inferiour Court may speed the Defendant to put in or to file his Bayl by Rules given in the Bill of Pleas. And if not filed according to the Rules, upon
a Cer-

of the Court of Common-Pleas. 143

a Certificate thereof a *Procedendo* to be granted. *Bancus Communis.*

That all Writs of *Habeas Corpus* returnable in Court, be returnable at a day certain.

That upon Bayl taken of a person in custody, the Judges Clerk to deliver the Bayl to the Prothonotary to be filed if assented unto; And to that end the Prothonotaries Fees to be deposited: But the prisoner not to be discharged until the Bayl be assented unto or overruled in open Court.

Orl. Bridgeman,

Tho. Tyrrill,

Robert Hyde,

Samuel Browne.

Order

Orders of Court.

M. **D**E Termino sancti Michaelis apud Oxon.
Anno Regni domini Regis Caroli se-
cundi decimo septimo.
An. 17 Car. 2.

Concerning Utlaries.

FOR the better execution of the pro-
cess of Utlary to be made and issued
by and out of this Court, and the pre-
vention of divers Abuses by neglect of
of the same, It is ordered, That upon
every Writ of Exigent which shall be
sued forth of this Court from and after
this Term, If a *Supersedeas* be not put
in thereunto at or before the returne
thereof, that no *Supersedeas* shall by any
Sheriffe or other Officer be allowed as
an Appearance to any such Writ of Exi-
gent, untill the defendant shall have
paid unto the plaintiff or his Attorney,
or left in the Court with one of the
Prothonotaries thereof, the full and
just

just Costs of Suite as he shall have been at in the suing forth of such Writ of Exigent, to be taxed by the said Prothonotary ; And that upon the reversal thereof, or any *Superfedeas* made thereunto, give special Baile, if the sum of money or damages expressed in the Original Writ whereupon the Exigent was awarded shall amount to the sum of Twenty pounds, and the plaintiff or plaintiffs shall require the same, and pay to the plaintiff or plaintiffs or his or their Attorney, or Attorneys or leave in the Court for him or them his or their full and Just Costs of Suit expended in the prosecution of the same, to be taxed as aforesaid. And for the prevention of the great and common Abuse committed by the Sheriffs and Bailiffs for enlarging of persons arrested upon writs of *Capias Vilegatum* before Judgement without a *Superfedeas* first had, It is further Ordered, That if any Sheriffe or Officer whatsoever shall set at liberty any person arrested upon a *Capias Vilegatum* before Judgement without a lawfull *Superfedeas* in that behalf first delivered unto him or them, that upon Affidavit thereof made and filed, every person offending therein shall pay the sum of forty shillings to the party grie-

Bancus
Communis.
~~~~~

*Bancus*  
*Communis*



ved or complaining, who shall have an Attachment of Course against such Sheriff, Officer or party offending for the payment of the same ; And the party or parties offending shall likewise undergo such other punishment as by this Court shall be thought fit.

*Orl. Bridgeman.*

*Tho. Tyrrell.*

*Sam. Browne.*

*Jo. Archer.*

---

  
*Orders*



## Orders of Court.

**D**E Termino Pasche Anno regni domini  
Caroli secundi Regis vicesimo quarto.

Concerning the entring of Appea-  
rances.


**W**HEREAS several irregular  
Attorneys retained to ap-  
peare for Defendants, have contrary to  
the Law and usage of this Court neg-  
lected to enter Appearances for such de-  
fendants, to the delay of Plaintiffs, da-  
mage of defendants, abuse of this Court  
and to the defrauding the Kings Ma-  
jesty of the duty of six pence for every  
Appearance given by a late Act of Par-  
liament intituled, *An Act for laying Im-  
positions upon proceedings in law.* For re-  
medy whereof it is Ordered by the Ju-  
stices of this Court in this present Easter  
Term, That every Attorney retained to  
appear for any defendant to any Writ  
issuing out of this Court which are  
made by the respective Filacers of this  
Court

*Bancus  
Communis.*



Court, shall from henceforth according to the Course of this Court enter the appearance of all defendants with the proper Filacer of this Court of the City or County from whom such process respectively did issue where the Action is laid, and pay the said duty of six pence into his Majesty to the said Filacer, together with the said Filacers Fee, upon the penalties in the said Act of Parliament mentioned. And it is further Ordered, That no Defendant shall be permitted to imparle, amend his plea, or move to change the *Venue* in any Action, untill his Appearance be first entred as aforesaid And that no Attorney of this Court shall receive any Declaration unless the Appearance be first entred with the Filacer as aforesaid, under the like penalty. And that no Attorney shall deliver or cause to be delivered any declaration or Count to the defendants or Tenants Attorney, or to any person for him, untill the Appearance (to warrant such delivery) be duely entred with the proper Filacer, under the penalty to be expelled the Court. And it is further Ordered for the better discovering and punishing of Offenders against this Order, That the respective Filacers of this Court may at all times freely peruse the Doggets and other

of the Court of Common-Pleas. 149

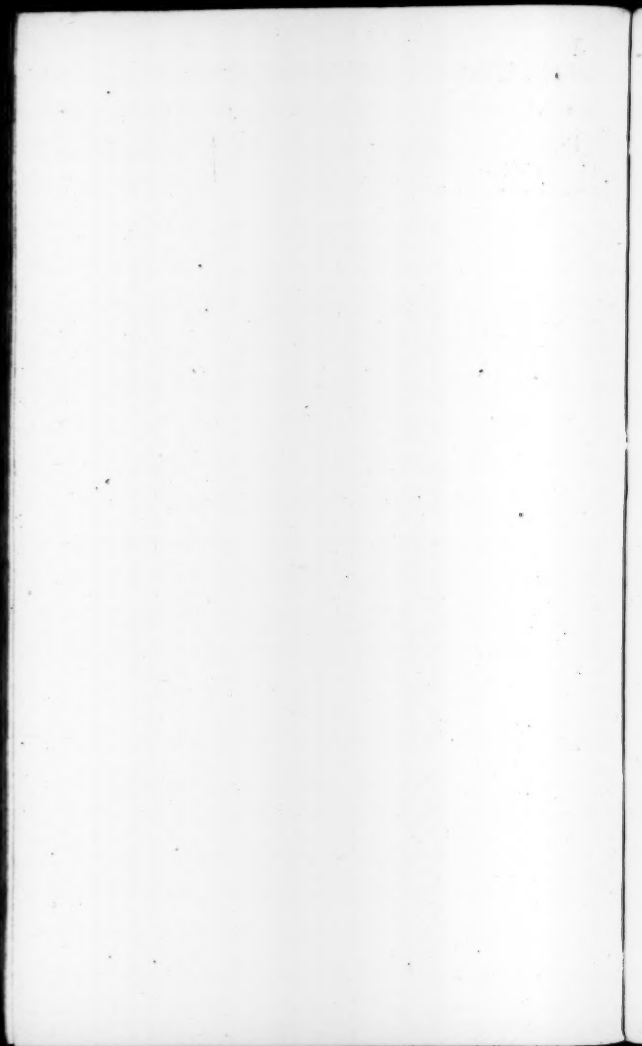
ther Memorialls of the Prothonotaries *Bancus*  
respectively of this Court, to the end *communis.*  
that in every Term they may deliver in   
writing the names of all Attorneys of  
this Court who shall not have entred the  
Appearances of such Defendants who  
imploy them with the proper Filacer of  
the Court, to the Lord Chief Justice of  
this Court or his Brethren, (which they  
are hereby required diligently to do) to  
the end the said Justices may without re-  
missness proceed against such as shall be  
found Offenders against this Order.

*Jo. Vaughan.*

*Jo. Archer.*

*W. Wild.*

*Ro. Atkins.*





THE  
*Course and Practice*  
 OF THE  
 Sheriffs Court  
 IN  
 The City of London.

---

*Of the Sheriffs of London, their power,  
 &c. with the manner of their Keeping  
 Courts.*

**F**irst ye shall understand, That  
 the Sheriffs do keep the Courts  
 which appertain to the King, be-  
 fore them in the *Guild-Hall* of  
 London, and hold Pleas of Debt of any  
 manner of Summe, and of all Actions  
 K k 4 personal

Sheriffs  
Court.



personal at the suit of partyes ; And that every of the said Sheriffs shall keep a Court severally by himself at the said Guildhall, and that by vertue of the Plaints and suits before them or either of them severally, aswell in their Counters as in the said Guildhall, according to the Custome of the City aforesaid. And every of the said Sheriffs use to hold by himself two general Courts in the Week, and every day for the delivery of Forreiners and strangers, if need be, If that they be not hindered by Festivall dayes, or other reasonable causes.

*Of Awarding proces.*

**A**ccording to the Ancient usage of the said City, The Clerks and Ministers of the Sheriffs (upon the plaints made) use incontinenly to award a *Capias*, and other proces, against the defendant, by testimony of the Serjeants of the said Office to them assigned, (*vide licet*) in the said Counters and Guildhall. And it is used to award a *Capias* in plaints of debt, actions of Account, of Covenant, and all other actions personal whatsoever.

*The*

## of the Sheriffs Court.

153

Sheriffs

Court.

*The Course used against Baile or Mainper-  
nors, where the Defendant doth make  
default, or absent himself.*


**I**N like manner he which is arrested  
(at the suit of the partie) for debt,  
or in any personal Action for finding  
of Mainpernors in the said Counters, or  
otherwise, ought to come before the  
Sheriffs, or their Clerks for that cause  
assigned, to the next Court at the said  
Guildhall, holden before the said She-  
riffs, before whom the plaint is made,  
upon such Condition, that if the defen-  
dant doth absent himself at the next  
Court, whereby he doth not keep his day,  
then he shall be condemned in the debt  
comprised in the said plaint, saving that  
the plaintiff if he be present, or can be  
found, shall come into the Court, and  
be examined by his oath, what summe  
is clearly due to him, and for what  
cause, over and above which sum found  
due by examination the plaintiff shall  
recover nothing but his damage, which  
to him shall be adjudged by the taxa-  
tion of the Court, or by the enquest if  
need be. And if the defendant may not  
be found then the Mainpernor shall be  
taken and charged with the debt and  
damages.

*Sheriffs  
Court.*



damages. And if it be a plaint of trespass, or batterie, of goods taken, money or of other actions personal, where a man ought to recover damages, if the defendant make default, in such case after he is arrested, and hath found Mainpernors as aforesaid, he shall be adjudged as attainted and the plaintiff shall shewe in his declaration by Bill the Cause of the Suit, and the quantity of the damage, and the place also; And thereupon shall goe forth an Enquest of Office from the same place to make a taxation of the damages to the plaintiff, and if they may not be found the Mainpernor shall be charged as before, and the Court may be certified by the same enquest or by sufficient examination of the plaintiff that the Defendant is not Guilty, and in such case the plaintiff shall recover nothing, notwithstanding the said default: And when any such Manipernors are arrested and committed to Prison, for that the principalls may not be found, when such Principalls be afterwards arrested at the suit of the Mainpernors, then the said Mainpernors shall be delivered.



*Of the Mainpernors surrendring the Defendant's body, in discharge of him self.* 

**I***tem*, When a man is arrested by his body, and finds Mainpernors to appear at his daye, or if the suit against him be put to an enquest, or that he plead to Judgment, and find Mainpernors to attend untill the suit be ended, according to the Custom of the City, It maketh no matter, at what hour the Mainpernors doe come into the Court of Record or to the Counter in which the plea is hanging to surrender the body of him for whom they become Mainpernors, for they shall be well received and afterwards discharged of their Mainpernorship.

*Proceedings against a Mainpernor in Account.*

**B**ut if a Man be arrested in an Action of account, and find Mainpernors that he shall come to the then next Court, at which Court if he make default, then his Mainpernors shall be warned to come to the next Court there holden and the plaintiff shall have  
re h

Sheriffs  
Court.



the same day, and if the Mainpernors come to the same Court, Auditors shall be assigned to hear the account, in the presence of the plaintiff, and the said Mainpernors; and the said Mainpernors shall be demanded if they know any thing to say in discharge of the Account, and if the Mainpernors will not come then the Plaintiff by his examination and oath shall recover his Action And after the same manner shall it be done if the defendant be convicted of account by Enquest.

*Proceedings against a Freeman that hath sufficient, &c.*

**A**Lso if a plaint be made against any Free-man which hath sufficient, &c. or against any other man haveing sufficient, and resident within the City, then such defendant shall be summoned by some of the Sheriffs serjeants, to come to the Guildhall for to make answer to the partie plaintiff at the Court of the Denizons; at which Court if he make default he shall be amerced, and the grand distress shall be awarded incontinently according to the usage of the City, And then it shall be awarded that the Doore of the defendant be locked

cd

## of the Sheriffs Court.

157

Sheriffs  
Court.



ed up and Sealed untill he will come  
for to make answer to the partie. And  
at every Court of the Denizons that he  
is demanded and doth not come he shall  
loose his issues : And if he break the  
sequestration, and it be testified in the  
Court by the Serjeants then it shall be a-  
warded that the defendant shall be ar-  
rested by his body, and when he is so  
arrested he shall find sufficient pledges,  
that he shall come to the then next  
Court to make answer to the Party  
upon pain limmitted, as before where  
the *Capias* is awarded, And if such de-  
fendant make diverse delays and the  
Serjeants testifie that the defendant, is  
fugitive or not sufficient then the *Capias*  
shall be awarded to take his body or at  
the least to prize the goods of the said  
defendant ; even as in an attachment ,  
And if any Partie come and plead to the  
enquest or in Judgment : then they  
shall be ruled according to the usage of  
the City without haveing any Essoine  
in these actions personal before or after  
And although that such a defendant  
which hath pleaded to the Enquest  
made default after the inquest joyned  
notwithstanding if he come after when  
the enquest shall be charged he shall  
have his challenge to the Jurors and  
shall

Sheriffs  
Court.



shall give his evidence notwithstanding the said default, And after that the parties be at Issue by the enquest the said parties are not demandable except the inquest be summoned.

*Wager o Law.*

**I**tem, In plea of debt the defendant may wage his Law, by the usage of the City, that he oweth nothing to the plaintiff, (that is to say) if he be a man enfranchised within the City, or resient within the same City, with seaven hands, his own being one.

*Forrein and not resient in the City.*

**S**uch Defendants wage their Law at the next Court following, and if the Defendant be a Forrein stranger and not resient in the City, he may wage his Law incontinently with three hands, his own being one, that he oweth nothing to the plaintiff, and so to be acquitted, and if he hath not two men ready to take their oaths with him, then the defendant, at the request of the plaintiff, ought to go (in the custody of a serjeant of the City) to six Churches which shall be nearest to the Guildhall, and

## The Course and Practice

159

Sheriff's  
Court.



and within the same Churches swear, that the oath which he took in the said Guildhall was good, and then the defendant shall be removed to the said Guildhall, and shall have his Judgement to be quit and the plaintiff shall be amerced and after the same manner shall it be done in other actions personalls there where the Law is acceptable.

### *Battery or taking of goods.*

**I**tem, If a man enfranchised within the City be impleaded by way of trespass for taking away of goods or for battery whereas no blood was shed nor apparant wound and after other trespass is supposed to be made against the peace such a free man so impleaded may wage and make his Law by the usage of the City that he is not guilty with seven hands as afore is said.

### *Executors and Administrators.*

**I**tem, Actions of debt, and Covenant, are maintainable against Executors and Administrators without specialty; and such executors, and administrators, by the usage of the City, when they come in to make their answer, may have their Law

Sheriffs  
Court.



Law by as many hands as the Court will award; upon such words, that they know nothing of the dutie, nor of the Contract, nor of the Covenant, and that they belive in their Conscience, that their testator at the time of his death did owe nothing to the plaintiff nor had broken any Covenant, and by such manner to be discharged.

*No Wager of Law to be allowed for Victu-  
alls or Rent.*

Also if a man be impleaded by plaint of debt for Victualls which were spent in his house, or other for the Farm of Houses, otherwise called Househire or House-rent, in such cases a man shall not have his Law, nor no protection hath been allowed in such case.

*A married Woman, using a trade which her Husband is ignorant of, is lyable to the Law in all points, as if she were unmarried.*

IF a married woman use any trade within the City by her self onely, whereof her husband hath no skill, such a wife shall be charged, as if she were  
without

## of the Sheriffs Court.

1611

without a husband, of all matters concerning the said trade; and if the husband and the wife be impleaded in such case the wife shall plead as a Single woman in Court of Record, and shall have her Law, and other advantages by way of plea, as a single woman; and if she be condemned, she shall be committed to Prison untill she hath made an agreement and the husband, nor his goods shall not be charged nor impeached in such case.

Sheriffs  
Court.

### *A Lease taken by a married Woman.*

**I**F any woman shall hire a House or Shop as though she were unmarried, she shall be impleaded and prosecuted as an unmarried Woman by way of debt, notwithstanding that she be married at the time of the Lease made, the Lessor not knowing thereof.

### *Trespass done by a married woman.*

**I**F a plaint of Trespass be made against a man & his Wife for trespass done by the wife alone, then the wife shall answer only without her husband & if her husband doth not come, she shall have the same pleas as a single woman, & if she be

L 1

attainted

Sheriffs  
Courts.



ted of trespass she shall be condemned and committed to Prison untill she hath made an agreement.

*A Woman received alone without her husband.*

**I**F a plaint of trespass be made by the husband and his wife, of battery made to his wife, in such case his wife shall be received, for her and her husband to pursue and recover her damage against the defendant, although that her husband be not there present.

*Where the husband shall have Aid of his Wife.*

**I**F a plaint of debt is brought against the husband, and the plaintiff declares, that the husband made a Contract with the plaintiff by the hand of the wife of the defendant, then the husband shall have aid of his wife, and shall have day untill the next Court to come forth with his wife, and the same day shall be given to the plaintiff.

*Wager*



*Wager of Law by a Free-man by birth or Redemption.*

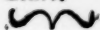


**W**Hen any defendant in plea of debt, or other action personall, wargeth his Law as a Freeman of the City, and the plaintiff demand, how he is Free, it behoveth the defendant to answer whether he be free by birth or redemption and if he say that he is free by redemption, the plaintiff may say that he hath no Record to prove the same in the Court, and if he fail of his Record then he shall be attainted and adjudged convicted in the said case, and if the defendant alleadge that he is free by birth the plaintiff may say that he was not born within the City, and that shall be enquired by an enquest taken within the said City, from such a place where the defendant alledges that he was born, and so at issue.

*One obligee paying the debt, shall recover it again of the other obligees.*

**I**F two or three or more be bound within the said City by obligation of debt and every of them in the whole, then if one of the obligees pay the whole


*Sheriffs  
Court.*



or he to whom the obligation is made prosecute within the said City and recover the debt against one of the obligees only, then he which hath so paid the debt, or is so condemned, may sue against the other obligees by plaint of debt joyntly or severally to make contribution so that every of them shall pay for his part according to the usage of the said City.

*Forrein Attachments.*

**W**HEN a plaint of debt is sued before any of the said Sherriffs, and it is testified by the Ministers that the Defendant hath sufficient within the said City and the plaintiff alleadges that the defendant hath goods Chattels and debts in the hands or Custody of another within the said City, and the plaintiff prays that such goods and Chattels be attached, and the debts secured, then at the suit and suggestions of the plaintiff such goods and Chattels of the defendants, wheresoever they be found within the said City, shall be attached, and the goods kept in the hands of the debtors, at the perill of the plaintiff and upon this the plaintiff shall sue at Four Courts before the same Sherriff before whom

whom the plaint is affirmed untill the Sheriff's Court. 

defendant be four times demanded and if the defendant doth not come at the Fourth Court, and hath made four defaults then the goods and Chattels so arrested shall be taken and delivered to the plaintiff, & if the goods be not of the value of the debt, then the debts due to the defendant in the hands of the debtors shall be levied and delivered to the same plaintiff untill he hath the summe in demand, and such arrests and attaching of goods, and garding or securing of money are called Forrein Attachments, according to the Custome of the City, and upon this the plaintiff shall find sufficient sureties to the Court by pledges before that any delivery be made to him, upon such Condition to make restitution to the defendant of all his goods and Chattels so taken, or of the price of them, and of the money of which he hath execution, if it be so that the defendant cometh within a year and a day next following into the Court and can discharge himself, and justifie by the Law that he oweth nothing to the plaintiff at the time of the plaint made. And if the said defendant will come within a year and a day as before is said and justifie for himself and plead

Sheriff's  
Court.



with the plaintiff, then he shall have a *Scire facias* forth of the same Record against the partie which hath such execution, to warn him to come to the next Court to shew cause why restitution shall not be made in manner and form abovesaid. And if the party against whom the *Scire facias* is sued, is warned and makes default, or that it be testified that he hath nothing within the said City, or that he be warned and doth not come to the next Court, then the party which did sue the *Scire facias*, shall have restitution of all his goods and Chattels so taken, or the price of them, and of all the money whereof the party had the delivery by Forrein Attachment, in the same manner he shall make restitution if he may discharge himself by way of plea; and in this manner restitution shall be according to part, if the defendant can discharge himself of part of the debt, although he cannot discharge himself of the whole, and if the party which had such execution, hath not sufficient to make restitution in manner aforesaid, then his said pledges shall be charged, and if the party against whom such Forrein attachment was made doth not come within the year and day to justify for himself as before is said, then



then to have no relief thereby. And it is to be understood, that hanging such forrein attachment if any other cometh into the Court of Record before the Fourth default recorded, or before execution be sued and be ready to prove, that the goods arrested were his proper goods at the time of the arrest made and yet are, and that notwithstanding the goods were arrested, neither he that so arrested or attached them, nor any other, hath any property in the same goods, but himself, nor to the value of the same mony, then he shall have the proof, and take his oath in manner aforesaid, by his own proper hand, and shall have the delivery of all such goods so arrested or of parcel of them, according as he hath made his proof, and so a servant shall have the proof of his Masters goods which be in his keeping according to the discretion of the Court. And also if the defendant in such forrein Attachment cometh into the Court at the fourth default recorded, or before he shall be received to plead with the plaintiff: and in the same manner it shall be recorded if he come before execution sued, so that the party be present in the Court or otherwise warned; and in the same manner in such forrein

Sheriffs  
Court.



attachment those in whose hands any goods are so arrested by Suggestion of the plaintiff and those in whose hands any money is stayed may come into the Court of Record before the same Sheriff and shall be excused and discharged by their oath that they have no such goods in their keeping, and that they do not owe a penny to those defendants at the time that those arrests and stayings were made.

And further it is to be understood, That *Forrein Attachments* according to the Custome of the said Citty are made upon Plaints of debt, as where A. is indebted to B. in the summe of Ten pounds, and C. is indebted to A. likewise in the same summe; B. entreth his Action of twenty pounds against A. by vertue whereof the ten pounds in the hands of C. (who in this Case is called the *Garnishee*) may be attached by a Sergeant as the money of A. to the use of B. And this ought to be returned upon the Action *between certain hours* least another *Attachment* be afterwards made in the hands of C. which if it should happen, C. hath no other way to avoid it, but by plaading the former *Attachment*, When this is done, the plaintiff must incontinently or before the next Court see an  
Attorney

## of the Sheriffs Court.

169

Sheriffs  
Court.



Attorney, for fear the defendant nonsuit the Action at the next Court (upon putting in Baile) and recover charges against the Plaintiff. After four Court days be past the plaintiff may cause the *Garnishee* C. to shew cause why the money attached in the hands of C. shall not be condemned to the use of B. the plaintiff.

*Note*, An Attachment is not perfected untill Bail and satisfaction be entred upon Record.

### *Of Sequestrations.*

**A** Sequestration is of the same nature as an Attachment, being made upon an Action of debt, which being entred, the Officer goes to the House, Shop or Warehouse of the party whose goods he is to sequester and finding no person therein, takes a Padlock & hangs it on the dore of such house, shop or warehouse, using words to this effect; I do sequester this house shop or warehouse (as the Case requires) and the goods and merchandizes therein of A. B. (the defendant in the Action) to the use of C. D. (the plaintiff) Then sealing it with his seal, makes return thereof at the Compter upon the Action. At the next

Sheriffs  
Court.



next Court (after four Court dayes are past) the plaintiff may have judgment to open the dores, and appraise the goods by a Serjeant, assisted by two Freemen, who justifie upon Oath at the next Court, to be holden at *Guildhall* for that Compter, that they have appraised the goods and merchandize of the defendant to the best of their skill and knowledge; Which appraisment being drawn up in writing & signed by the Appraisors and Serjeant, the Court granteth Judgment.

*Note*, The Defendant may dissolve the sequestration by putting in Bayl before satisfaction; or he may put in Bayl after satisfaction *ad disprobandum debitum*.

*No Forrein Plea to be allowed.*

**W**Here a man is impleaded before one of the Sheriffs of *London* by plaint of debt, and the plaintiff shew's forth an obligation bearing date in *London* in the proof of the debt, the which obligation is simple or indorsed or by Indenture of Covenant, in such case by usage of the City the defendant shall not be received to plead an acquittance or release of the plaintiff bearing date in a forrein County, nor nopenment



## of the Sheriffs Court.

171

Sheriffs  
Court.



ment made nor Condition or other matter, except such matter which may be inquired and tried within the said City ; And if any defendant plead any such acquittance or release, or alleadge any payment or other matter to be made in a forrein County out of the said City for to put the Court from its Jurisdiction, if such a defendant will not say any other thing, he shall be debarred for default of answer. But if it be so that the Indorsment of the obligation or the Indentures thereof made, make express mention to make or perform any condition or other matter in other places out of the said City, and such matter is alledged by the defendant, then the Court shall surcease, and it shall be said to the plaintiff that he shall sue at the Common Law, and in the same manner it is used in a plaint of trespass, and in other actions personalls of bargaines and contracts made within the said City, the defendant shall not be received to plead nor alleadge matter out of the said City, except such matter which may be inquired and tried within the same City.

No

Sheriffs  
Court.



No certain place recited in an Obligation.

**I**tem, When an Obligation is shewen forth which beareth date at no certain place and the plaintiff alledges that the said Obligation was made in a certain parish within the said City, and the defendant on the contrary part alledges that the said Obligation was made in a certain place out of the said City, which he is ready to averr and forthwith plead a forrein matter in avoidance of the said obligation, and the plaintiff intends to averr the contrary that the said obligation was made within the said City of *London* in manner as he hath declared, in such case it is used to take the inquest in *London* in that Parish where the plaintiff hath declared that the obligation was made; if the plaintiff desire it, and if it be found that the obligation was made in *London* in that Parish where the plaintiff hath declared by his declaration, then the defendant shall be condemned in the debt and in dammages to be taxed by the same inquest.

## of the Sheriffs Court.

173

Sheriffs  
Court.

### *A double Obligation.*

**I**tem, Where an obligation is made in a double some by Indorsement or by Indenture, and the partie which is bound is impleaded and acknowledgeth the obligation, and the day of payment is incurred as it appeareth by the same obligation, Notwithstanding the plaintiff ought to recover but only the clear debt which was behind and that by the oath of the plaintiff, or by the lawful Information of his Attorney if the plaintiff, be not there present, and shall not have the double debt contained in the said obligation and his damage shall be taxed by the Court according to the time which is past, by their discretion, or by an enquest; And although the Defendant in such case against such an obligation made in double, plead that it is not his deed or that he hath performed the duty of payment contained in the indorsement or in the Indenture thereof made, or other like matters, and upon this it is put to the inquest and found against the defendant by verdict of inquest yet the plaintiff shall recover nothing but that which is found due clearly by the inquest (*viz.*) the single duty and



## The Courle and Practice

and his dammages taxed by the inquest, and if the obligation be shewed forth and the party defendant acknowledgeth the obligation, and the day be past and the defendant alledges that the party be satisfied part of the debt, then the plaintiff at the request of the defendant shall be examined by his oath how much of the debt doth rest unpaid, and in such case the plaintiff shall recover no more then that which he hath affirmed by his oath to be due and unpaid and his dammages shall be taxed by the Court; And such an obligation made single the defendant may plead that it is not his deed, and if it be found that it is the deed of the defendant, yet the plaintiff shall recover no more then that which is found due by the Inquest and the dammages shall be taxed by the Inquest, and the defendant in this case shall pay a Fine for dening of his deed, and in other cases aforesaid the defendant shall be amerced, which Note well.

*Item,* Where an Obligation is made of a certain summe upon diverse conditions to be performed by the Indorsement or by Indentures thereof made and upon this a Plaint is made and the parties be at traverse and at issue upon some condition broken, and it is found by the Inquest



Inquest at the Mife of the plaintiff againſt one of the defendants, that he is ſo bound, and that he hath broken the condition, yet the plaintiff ſhall not recover his dammages which he hath ſuſtained by reaſon of the Condition broken, but the damages ſhall be taxed by the ſame Inqueſt, and the obligation ſhall be ſaved for him for to ſue the other Condition afterward; But ſome are in doubt of this.

*An acquittance in a forrein County.*

IF an Obligation of debt which is made within the City be ſhewed forth, and the defendant alleadge that he hath an acquittance Indenture or other thing ſealed by the plaintiff, the which might availe him and diſcharge him againſt the plaintiff if he had them ready in his hand, and ſaith further, that the writings ſealed are in a forrein County, and out of the ſaid City, and this he is ready to ſwear, then the ſaid defendant after his Oath made ſhall have his day aſſigned by the Court, to have his ſaid writings ſealed at a certain Court after, according to the diſtance of the place; and upon this he ſhall find pledges at his perill, So that if he come  
at

Sheriffs  
Court.



at the said day assigned, and bring the same deed iusealed which he hath alleadged, then he shall be received, to take and plead his advantage by the Deed; and if he make default at his day, or if he faile of that which he hath alleadged, then he shall be condemned with the said obligation, and the damages shall be taxed by the Court; Saving the plaintiff or his Attorney shall be examined upon the duty.

*A Freeman arrested without Summons if he be a fugitive.*

**I**F a plaint of debt be made against a Freeman of the City, where by the Law of the City he shall have one summons by reason of his Franchise if the plaintiff come to the Sheriffs and cause Four or Six credible men of the said City to be brought that will testify that the defendant is a fugitive, and that he will withdraw and absent himself, then the said Sheriffs by their Witness may arrest the defendant by his body or by his goods aswell as a Forreiner.

*A plea of taking of Cattel.*



**T**HE Sheriffs may hold all pleas for taking of Waifes in the place of a Replevin, and avowry may be made and retorn awarded in such pleas, even as in the *Hastings*, if the cause doth not touch freehold; and such plea is called a plea of taking and detaining of Cattle, and pledges shall be found to make retorn of goods or of the value aswell as in Replevin.

*No adjournment of the Court.*


**I**T is to be known, that no adjournment is made in the Sheriffs Courts, nor no day given by prescription, but only that the parties keep their day at the next generall Court, if it be not for some speciall Cause.

*Of Pleading.*

**I**T is used in actions personal before the Sheriffs at the first day when the parties appear, and the plaintiff hath declared against the defendant, the said defendant shall make answer the same day without haveing any other further day for to imparle; and in the same

M m

manner

*Sheriffs Court.* manner if the defendant plead any plea, or alleadge matter against the plaintiff, the said plaintiff shall reply incontinently without having any day for to im-  

 parle, without the assent of the parties.

*Customes pleaded.*

**I**F any Customes or usage be pleaded or alleadged in the Court of the Sheriffs; whereof the Sheriffs nor their Ministers be not fully informed, then such usage and Customes shall be discussed by the Mayor and Aldermen; and this shall be done before Judgment given.


*Nota.*

**A**Ctions of debt are maintainable by the usage of the said City of simple grants of pledges and Covenants simply without any specialty; *Easter Term Anno 22 Ed. 4. fo. 2. Easter Term Anno 43. Ed. 3. fo. 10.*

*No Wager of Law against a Tally.*

**A**Tally of debt sealed by the usage of the City is as strong as an Obligation, and there where a plaint of debt is made, and such a Sealed Tally is shewed forth in proof of the debt, the defendant shall not have his Law, to say he oweth nothing, nor other matter no  
 more



more then against an obligation; but *Sheriffs* he shall well say the day of payment is *Court*. otherwise then the plaintiff hath declared. 

*Recognizance taken in the Sheriffs Court.*

**T**He Sheriffs of *London* use every of them by himselfe to take Recognizances of debt in their Courts of any manner of summe, and if the day of payment be past, and the money not paid, then at the suit of him to whom the Recognizance was made if it be within the year, All the goods and Chattells of the Recognizor found within the Citty, shall be taken and delivered to the partie unto whom the value of the debt contained within the said Recognizance, doth belong without extending the Lands of the Recognizor; and if the year be past, then a *Scire facias* shall be sued against the Recognizor, to cause him to come & shew if he know any thing to say by which execution shall not be sued of his goods as afore is said,

*The Sheriffs may detain any man in their Houses without sending him to the Gaol.*

**T**He said Sheriffs by usage may keep any manner of persons before them condemned or committed to their keep-

Sheriffs  
Courts.



ing aswell in their Houses whertin they are dwelling, and in their Counters, as in their Gaols, so that they be alwaies detained in their keeping, and not going at Large out of their houses nor Counters aforesaid.

*Processe to be recorded within the Counters.*

**T**He pledges Manipernors and Attornies taken and retained within the Counters of the Sheriffs, and other Proses from thenceforth duely made are bound to be recorded, aswell as the Courts holden within the *Guild Hall*.

*Nota.*

**E**Very Alderman of *London* may by usage Record Attornies in the pleas hanging in the Sheriffs Courts.

*Nota.*

**T**Hat When an Enquest between parties is joyned and sworne before the Sheriffs in personall pleas, if the parties will assent, the Court by usage may give day to the Inquest to consult of their Verdict untill another day after in manner as the parties may accord; and this at the perill of the plaintiff if any Juror should die, or any chance should happen in the mean time.

*Default*

## of the Sheriffs Court.

181

Sheriffs  
Court.

*Default by a Juror 3 d.*

**T**HE Jurors which are summoned in an Inquest shall not be amerced, although they make default, more then iij. d. but if they withdraw themselves over long and will not come, the Sheriffs by usage may lock up their dores to constrain them to come.

*Inquest of Offices for batteries.*

**T**HE Inquest of Office which are taken by the Sheriffs to inquire of Fraies and Batteries made against the Peace, are not traverfable by other new Inquests by usage, but at the suit of the partie; every partie shall answer notwithstanding this Inquest of Office.

*A Contract made by a Merchant in a foreign County is answerable in London.*

**I**N plaints of debt and accompt, and other personall Contracts made between Merchants, if the plaintiff declare that the defendant at any Town or place Merchandable within the Realm did bargain or buy of the same plaintiff any Merchandize, or did receive his money for him to pay, deliver or to render accompt in any place within the City of London, In such case by the usage the de-

M m 3      fendant

Sheriffs  
Court.



sendant, shall be put to his answer notwithstanding that the Contract was made out of the City.

*Inquest of Merchants passant.*

**A**Nd if the parties be at travers and plead to the Issue of the Inquest, then shall the Inquest be taken of the men of the said City; that is to say, of the Merchants which pass between the said City, and the Town Merchandable where the Contract is supposed to be made; for this intent, that such Merchants passing may have knowledge of the said Contract.

*Contracts made beyond the Seas.*

**I**tem, The Sheriffs of London have used alwaies to hold Pleas before them between any manner of Merchants, there where the parties are Merchants, of all manner of bargaines and Contracts personall which concern Merchandize, made beyond the Seas at the Town or place Merchandable there where Bargaines or Contracts are made by expresse words upon payment or delivery of Merchandize, or to render accompt within the said City, and in such case if the partie discend to the Issue of the Inquest, then the Inquest shall be taken of the people which

## of the Sheriffs Court.

183

Sheriffs  
Court.



which do dwell within the City, that is to say, of the Merchant travellers which use to passe beyond the Sea which may best have knowledge of the bargaines and Contracts aforesaid, And if any Merchant stranger and Alien be partie to the plea, and such an Inquest is to be taken, then the Merchant Alien shall have half of the Inquest of his own language.

### *Goods esloyned out of the City.*

**I**F a plaint of debt be made, and the Minister testifie that the defendant is not resident within the City, but hath withdrawn himself and esloyned his goods, and it is testified that he hath Lands, goods and tenements within the same City, then at the pursuit of the plaintiff, the same Lands, goods & tenements by the usage of the City shall be extended and delivered to the same plaintiff to keep by force of the same extent untill he hath levied the money to him due, finding sureties to sustein the Tenements conveniently, and also to repay to the defendant the money thereof received, in the mean time if it be so that the same defendant cometh into the Court of Record within a year and a day after the delivery made, and may

M m 4

discharge



## The Courte and Practice

discharge himself that he oweth nothing to the plaintiff.

### *Examination before Judgment.*

**T**He Sheriffs do use to examine the Parties in all Actions personall hanging before them, if any of the Parties desire it, and to proceed to Judgment according to that which is found due by examination.

### *Peremptory oath allowed,*

**V**Here any action personall is hanging before any of the said Sheriffs, and any matter be alleadged by the defendant in barr of the Action, or thing materiall for to delay the plaintiff, and the plaintiff put himself upon the oath of the defendant peremptorily, that the plea or exception given by the same defendant is not true, then the said defendant if he be in Court, or if he be resident within the City, that he may well come by the discretion of the Court, shall be sworn if he will that his plea or exception which he hath given is good and true, and if he come and doth refuse to take such an oath, then he shall be taken as convicted in the said case, and upon this the plaintiff shall recover

## of the Sheriffs Court.

185

Sheriffs  
Court.



recover that which is in demaund according to that which may be found by examination of the plaintiff, or by the Inquest of Office if need be; and if he be sworn the plaintiff shall be put from his suit or from his action if he will not swear for his part, that his suit or other matter alledged by him is good & true; and if such an oath be put upon the plaintiff, and the plaintiff take his oath, he shall recover by the same oath if the exception be materiall and so are such peremptory oaths of the one and the other according to the matters of the exception.

### *Appearance accepted sitting the Court.*

**I**F a man be arrested by a plaint of debt or by other action personall, and shall find Mainpernors for to come ready at the next Court before the Sheriffs to answer the party, at which Court although the defendant be demanded in convenient time to come and save his Mainprise, and make default, and the default be recorded, yet if the defendant cometh while they be sitting in the Court, he shall be received to plead safely; in such case he hath lost the advantage of Waging his Law, whereas he might have had his Law if he had come in time.

*Plaint*

Sheriffs  
Court.



*Plaint mended before issue or Judgment.*

**W**HERE the parties appear in the Sheriffs Court it is used that the plaintiffs may amend their plaints and their bill alwaies before that the same parties be at issue or plead in judgment in Court of Record.

*Ne unque Ballivus cannot be pleaded here in Account.*

**I**N Actions of Accompt before the Sheriffs the plaintiff by usage of the City may not declare that the defendant was his bayliffe in no cause but receiver of his money or of his goods &c.

*Account against an unmarried Woman or an Infant.*

**A**N Action of account is maintainable by the usage against an unmarried Woman, and against Infants within age if they be Merchants, or if they keep shops of their mistery or merchandize, and an action of debt in the same manner of that which doth touch their mistery or their Merchandize.

*The*



## of the Sheriffs Court.

187

Sheriffs  
Court.



*The Mayor and Court of Alderman to  
command the Sheriffs Court.*

**W**HEN as Pleas are depending be-  
fore the Sheriffs, it is used that  
the Mayor of *London* for the time may  
send to the Sheriffs to cause the Quarrell  
to come before him and the Aldermen  
to be proved, and for to determine and  
discourse the same quarrell before them  
or to remand the same quarrell before  
the said Sheriffs to go forward in the  
proof according to that which the  
Mayor and Aldermen do see that is to be  
done, and to command the Sheriffs to  
surcease at their Will;

*To arrest for security before the Money or  
Rent be due,*

**W**HEN a debtor is bound within the  
said City by obligation in a cer-  
tain summe to be paid at a certain day  
to come, which debtor was thought suf-  
ficient at the time when he was boun-  
den, and afterwards is become fugitive  
or not sufficient, then if the Creditor  
there cometh before the Mayor or She-  
riffs of the said City making such sugges-  
tion and bring with him Four or six cre-  
dible people of the same City which  
will lawfully testifie that the debtor will  
withdraw

**Sheriffs  
Court.**



withdraw himself and take his goods out of the said City, or that he is not sufficient to pay the payment, then the Mayor or one of the Sheriffs before the suggestion is made doe use to arrest the debtor although the day contained in the obligation be not come, and to detain the same debtor in prison untill the day of payment be incurred or otherwise he shall find pledges to keep the same day and in the same manner to arrest before the day for House-hire if the Tenant be fugitive.

*An Arrest made by a Creditor without a Serjeant.*

**I**F a Freeman of the City find his debtor suddenly within the same City which debtor hath withdrawn himself before, or be fugitive, and if the said debtor would escape, before that the Creditor may have an Officer to arrest him, in such case it is used that the Freeman himself by the aid of other his Neighbours without other Minister may arrest his said debtor and bring him to the office of one of the said Sheriffs and afterwards make his suit as the Law demands.

**Of Amerciaments.**

**T**ouching the Amerciaments which are to be taken of the plaintiff in the Sheriffs Courts, it is used if the damage be of Forty shillings or less to take for the amerciament iiii. d. and if above Forty shillings, it is used to take twelve pence for the amerciament.

*The Landlord is to have his Rent paid first before any other although the party hath committed felonie.*

**I**F a Forreiner within the City be fugitive or withdraw himself by which his goods within his House be arrested or taken at the Suit of the parties by plaint, yet the Lessor which is called Landlord shall be before all others for the Farme of his house behind by a year, and for so much as his summe amounts he shall have his goods within the said House, left in the same house to the use of the Landlord; And although that such a Forreiner within the City committeth Felony or other Contempt by which his goods and Chattels are arrestable or forfeitable yet the Lessor by the usage of the City shall be served of his Farm that is to say by a year as before is of goods within the same House.

*For*

Sheriffs  
Court.



*For houses of Forty shillings or under a quarters warning but above Forty shillings Rent halfe a years warning.*

**W**HEREAS Tenants within the City which hold at Will and will go forth and surrender their Houses they shall give warning to the Lessor before their departure, that is to say, of the Houses which are worth to Farm Forty Shillings or lesse, warning shall be given by a quarter of a year before, And if the Farm of the House pass forty Shillings, the warning shall be given by half a year before their departure at the perill of the tenant, And after the same manner it shall be done to the Tenant if the Lessor, put forth the tenant.

*Executions by body or goods.*

**V**When a man is condemned at the suit of the party in debt or in dammage before the Sheriffs, the party which hath so recovered may chuse to have the body of him which is so Condemned committed to Prison untill he hath made an agreement, or to have execution of his goods at his perill.

of

## of the Sheriffs Court.

### *Of Waging Law.*

119  
Sheriffs  
Court.

**W**hen a man prayes to wage his Law where he may not have it, if the plaintiff can make it appear (by Oath) to the Major and his Brethren the Aldermen, that the Contract is true, that there he shall not wage his Law: *Anno 2. R. 3. fo. 17.* Or if he shew any Bill or writing sealed and delivered by the defendant testifying the Contract: *Termino Mich. Anno. 30. H. 6. f. 36.*

### *Reperations by the Lessor.*

**I**F a man make a Lease for a year, or at will without Covenant the Lessor shall make Reperations: *Trin. 27. H. 6. fol. 12. D.*

### *Assumpsit and Concessit solvere.*

**A** man shall have an Action of Debt by the Custome of this City upon an *Assumpsit* or *Concessit solvere*, but he ought rehearse that it was for Merchandize, goods and chattels which were sold, without rehearsing the speciall matters; And yet it behoveth him to say for Merchandize goods and chattels which when they were First sold he granted to pay. *Pasche Anno 38. H. 6. fo. 33. A.*

Concerning

# The Courte and Prattice

## Concerning the Tuition of Orphans.



**B**Y the Custom of the City of *London* the Mayor Aldermen and Chamberlains shall have the keeping of Orphans in the City; and he to whom they commit the Custody and Tuition of such Orphans shall have a Writ of Ravishment of Gard. *Fitz. Title Guard* 31. *Pasche* 32. *E. 3. F. n. b. 142. G.*

*One may not stop his own Gutter, to annoy his Neighbour.*

**I**T is the Custom of *London*, That where two Tenements be adjoyning. and the one hath a Gutter running by the other Tenement he in whose possession the Gutter is may not stop it, although it be upon his own ground. *Trin. 11. H. 7. 17.*

### Partition.

**B**Y the Custom of this City, He that will sue partition of Lands in *London* shall have a Writ directed to the Mayor and Sheriffs of *London* in the nature of an *Audita Querela*; And it also appears by the Usage of the said City, That a Joyntenant or Tenant in Common shall have this writ against his Companion. *F. n. b. fo. 62. b. c.*

**FINIS.**